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No. 04-473

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In The Supreme Court of the United States

GIL GARCETTI, FRANK SUNDSTEDT, CAROL NAJERA and COUNTY OF LOS ANGELES

Petitioners,

vs.

RICHARD CEBALLOS,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX VOLUME II OF III (Pages 195-379)

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Petition For Certiorari Filed October 1, 2004
Certiorari Granted February 28, 2005

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD CEBALLOS, Plaintiff, vs. GIL GARCETTI, individually, and in his Official Capacity, FRANK SUNSTEDT, Individually, and in his Official Capacity, CAROL NAJERA, Individually and in her Official Capacity, COUNTY OF LOS ANGELES, A Municipal Corporation, and DOES 1 THROUGH 10, Inclusive, Defendants.	) Case No.) CV 00-11106 AHM (AJWx)) Honorable A. Howard Matz) **DECLARATION OF CINDY S. LEE AND EXHIBITS IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION OF INDIVIDUAL ISSUES** Date: January 7, 2002 Time: 10:00 a.m. Courtroom: 14 [Notice of Motion and Motion for Summary Judgment/ Summary Adjudication; Statement of Uncontroverted Facts and Conclusions of Law; and Proposed Judgment filed concurrently herewith]

Defendants GIL GARCETTI, CAROL NAJERA and FRANK SUNDSTEDT submit the following Declaration of Cindy S. Lee and exhibits in support of their Motion for Summary Judgment, or in the alternative, for Summary Adjudication.

DATED:
December 17, 2001

FRANSCELL, STRICKLAND, ROBERTS & LAWRENCE

By /s/ Cindy S. Lee
Cindy S. Lee
Attorneys for Defendants GIL GARCETTI, FRANK SUNDSTEDT, and CAROL NAJERA

DECLARATION OF CINDY S. LEE

I, Cindy S. Lee, declare as follows:

1. I am an attorney at law, duly licensed to practice before this Court and all of the courts of the State of California, and am a partner of the law firm of Franscell, Strickland, Roberts & Lawrence, attorneys of record for defendants Gil Garcetti, Frank Sundstedt and Carol Najera in the above-captioned action. The matters stated herein are within my personal knowledge and, if duly sworn, I could and would competently testify thereto.

2. Attached hereto as Exhibit "A" is a true and correct copy of plaintiff Richard Ceballos' Second Amended Complaint for Damages and Injunctive Relief.

3. Attached hereto as Exhibit "B" is a true and correct copy of the cover page and referenced pages of the deposition transcript of plaintiff Richard Ceballos.

4. Attached hereto as Exhibit "C" is a true and correct copy of the reporter's transcript of plaintiff Richard Ceballos' testimony at the Motion to Traverse hearing in the case of *People v. Cuskey*, Case No. KA045491, conducted on March 20, 2000.

5. Attached hereto as Exhibit "D" is a true and correct copy of the cover page and referenced pages of the deposition of defendant Frank Sundstedt.

6. Attached hereto as Exhibit "E" is a true and correct copy of the cover page and referenced pages of the deposition of defendant Gil Garcetti.

7. Attached hereto as Exhibit "F" is a true and correct copy of the cover page and referenced pages of the deposition of defendant Carol Najera.

8. This Motion is made following my unsuccessful attempt to meet and confer pursuant to Local Rule 7.4.1 several times shortly after October 24, 2001. Attached hereto as Exhibit "G" is a true and correct copy of the meet and confer letter faxed to plaintiff's counsel on October 24, 2001.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 17th day of December, 2001, at Pasadena, California.

/s/ Cindy S. Lee
Cindy S. Lee

EXHIBIT "C"

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. EA "E" HON. DAVID S. MILTON, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA)
PLAINTIFF,)
VS.) NO. KA045491
MICHAEL CHARLES CUSKEY, RANDY LONGORIA,)
DEFENDANT.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
(1538.5 MOTION)
MARCH 20, 2000

APPEARANCES:

FOR THE PEOPLE: GIL GARCETTI, DISTRICT ATTORNEY
BY: CAROL NAJERA, DEPUTY
400 CIVIC CENTER PLAZA, STE 201
POMONA, CALIFORNIA 91766

FOR DEFENDANT CUSKEY: GEOFFREY POPE, ESQUIRE

FOR DEFENDANT LONGORIA: RICHARD ESCOBEDO, ESQUIRE

SHARON BAKER FOX, CSR NO. 4332
OFFICIAL REPORTER

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LEGEND

N = MS. NAJERA

P = MR. POPE

[1] POMONA, CALIFORNIA;
MONDAY, MARCH 20, 2000

11:00 A.M.

DEPARTMENT NO. EA "E" HON. DAVID S. MILTON, JUDGE

- - - 000 - - -

APPEARANCES:

THE DEFENDANT CUSKEY PRESENT IN COURT AND REPRESENTED BY COUNSEL, GEOFFREY POPE, ESQUIRE; THE DEFENDANT LONGORIA PRESENT IN COURT AND REPRESENTED BY COUNSEL, RICHARD ESCOBEDO, ESQUIRE; CAROL NAJERA, DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY, REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA, THE FOLLOWING PROCEEDINGS WERE HELD.

(SHARON BAKER FOX, CSR NO. 4332, OFFICIAL REPORTER.)

THE COURT: CUSKEY, LONGORIA, OJALA.

MATTER HERE FOR CUSKEY AND LONGORIA, IS THAT CORRECT?

MS. NAJERA: THAT'S MY UNDERSTANDING.

THE COURT: AND OJALA HAD BEEN SENTENCED AND NOW RELEASED?

MS. NAJERA: THAT'S ALSO MY UNDERSTANDING, YOUR HONOR.

MS. NAJERA: AT THE PEOPLE'S REQUEST, YEAH.

THE COURT: ALL RIGHT.

[2] MR. OJALA, YOU MAY HAVE A SEAT.

IS THERE SOME REASON WHY MR. OJALA IS HERE?

MS. NAJERA: YOUR HONOR, I THINK WHEN MR. CEBALLOS FIRST LOOKED AT THIS, HE THOUGHT SOMETHING, DEPENDING ON THE OUTCOME OF THIS, HE WOULD WANT MR. OJALA TO BE SOMEHOW AFFECTED BY IT ALL, BUT I'M NOT QUITE SURE. BUT I AGREE WITH HIS ANALYSIS OF THE WHOLE SITUATION, SO I THINK WE CAN JUST HAVE HIM HERE AND PUT ON THE MOTION AND SEE HOW THIS ALL KIND OF PANS OUT.

THE COURT: HAVE A SEAT, MR. OJALA, IN THE SPECTATOR SECTION OF THE COURTROOM.

ALL RIGHT.

MATTERS OF CUSKEY AND LONGORIA. APPEARANCES, PLEASE.

MR. ESCOBEDO: RICHARD ESCOBEDO APPEARING FOR MR. RANDY LONGORIA, PRESENT OUT OF CUSTODY.

MR. POPE: GEOFFREY POPE FOR DEFENDANT CUSKEY. HE'S BEFORE THE COURT ON BOND.

MS. NAJERA: CAROL NAJERA FOR THE PEOPLE, YOUR HONOR.

THE COURT: ALL RIGHT.

THE MATTER IS HERE. WE HAVE HELD SEVERAL MOTIONS. STILL REMAINING IS THE 1538.5, MOTION TO QUASH, SEVER AND TRAVERSE.

IS THAT RIGHT?

MS. NAJERA: THAT'S MY UNDERSTANDING.

[3] MR. ESCOBEDO: YES.

THE COURT: READY TO PROCEED?

MR. ESCOBEDO: YES.

THE COURT: ALL RIGHT.

MR. POPE: YOUR HONOR, ON BEHALF OF CUSKEY, WE WOULD JOIN IN CO-DEFENDANT'S MOTION. AND I BELIEVE THEY ARE JOINING OURS. IN ESSENCE, IT IS A MOTION TO TRAVERSE.

THE COURT: ALL RIGHT.

MS. NAJERA: AND WE'RE PREPARED TO GO FORWARD ON THAT TODAY, YOUR HONOR.

THE COURT: ALL RIGHT.

YOU MAY BE SEATED, COUNSEL. OR YOU MAY STAND, WHATEVER.

THE BAILIFF: IF I COULD REMOVE SOME OF THESE BAGS, WE COULD GET SOME SEATS HERE. THERE ARE BIG SUITCASES HERE.

(PAUSE.)

THE COURT: ALL RIGHT.

THE COURT HAS READ THE MOTION TO TRAVERSE, POINTS AND AUTHORITY AND THE SEARCH WARRANT AND AFFIDAVIT AND ATTACHMENTS.

ARGUMENT.

MS. NAJERA: COUNSEL, IF YOU ARE GOING TO SUBMIT ON YOUR MOVING PAPERS?

[4] MR. ESCOBEDO: NO, I'M NOT GOING TO SUBMIT

I DO HAVE UNDER SUBPOENA SEVERAL DEPUTIES THAT WERE INVOLVED IN THE SEARCH WARRANT, YOUR HONOR. I'D LIKE TO HAVE THEM CALLED AS WITNESSES ON THIS MATTER.

THE COURT: WHAT'S THE OFFER OF PROOF?

IT'S WHAT'S CONTAINED IN THE SEARCH WARRANT, RIGHT?

MR. ESCOBEDO: WELL, IN MY MOVING PAPERS, YOUR HONOR, UNDER AUTHORITY OF 1539, I'M REQUESTING A SPECIAL HEARING BEFORE THIS COURT IN ORDER TO HEAR THE EVIDENCE REGARDING WHETHER THE ISSUES AND MATERIAL INVOLVED IN THE AFFIDAVIT WERE TRUE, IN FACT, OR MISSTATEMENT OR OMISSIONS. I'M ASKING THAT DEPUTIES BE CALLED TO TESTIFY, TO BRING IN EVIDENCE THAT, IN FACT, MATERIAL IN THE AFFIDAVIT WAS NOT CORRECT, WAS, IN FACT, FALSE, AND THERE WAS SOME MATERIAL OMISSIONS.

THE COURT: LIKE WHAT?

MR. ESCOBEDO: WELL, FIRST OF ALL, YOUR HONOR, REGARDING THE LOCATION OF THE STOLEN VEHICLE, IN THE COMPLAINT REPORT AS WELL AS THE VEHICLE REPORT, WHICH WERE FILLED OUT BY THE ARRESTING – OR THE DEPUTIES, THEY INDICATE THAT THE STOLEN VEHICLE WAS FOUND AT 241 THIRD STREET, WHICH IS ABOUT 80 TO A HUNDRED FEET DOWN THE STREET FROM THIS DRIVEWAY.

[5] OFFICER WALL IN HIS AFFIDAVIT BEFORE THE MAGISTRATE INDICATED THAT THE STOLEN VEHICLE WAS LOCATED ACROSS THE STREET FROM 214 THIRD STREET, WHICH IS DIRECTLY IN FRONT OF THIS ALLEYWAY OR DRIVEWAY OR ROADWAY.

FURTHERMORE, THERE IS –

THE COURT: YOU THINK – YOU DON'T THINK THERE WAS A TRANSPOSITION OF THE NUMBERS, 214, 241?

MR. ESCOBEDO: NO, I DON'T, YOUR HONOR.

THE COURT: ALL RIGHT.

WHY DO YOU THINK THAT?

MR. ESCOBEDO: BECAUSE OFFICERS SPITULSKI AND SIMPKINS WERE THE OFFICERS WHO ORIGINALLY INVESTIGATED. THEY PUT DOWN THE CORRECT INFORMATION AS 241.

NOW, IF AN OFFER- – OFFICER WALL – DEPUTY WALL INDICATED 214. NOW, IF HE – HE ALSO INDICATED THAT BECAUSE OF THE CLOSE PROXIMITY

TO THE ENTRANCE TO THIS ROADWAY, THE DEPUTIES WERE ABLE TO FOLLOW THE TIRE TRACKS. THAT'S INCORRECT, YOUR HONOR. HE DELIBERATELY PUT 214 RATHER THAN 241 BECAUSE THAT IS MORE CONVENIENT AND WOULD SUPPORT HIS THEORY THAT TIRE TRACKS LEAD OUT OF THIS ROADWAY.

SPITULSKI AND SIMPKINS HAD THE POSITION CORRECT, PUT IT, DOWN AS 241.

THE COURT: PEOPLE'S RESPONSE?

MS. NAJERA: YOUR HONOR, I THINK IT IS A TYPOGRAPHICAL ERROR. AND, QUITE FRANKLY, IT DOESN'T [6] STATE – IN THE AFFIDAVIT, IT SAYS THAT THE TRUCK WAS PARKED ON THE STREET ACROSS FROM –

THE COURT: WHY DON'T YOU DRAW US TO THE ATTACHMENT, PAGE NUMBER AND LINE.

MS. NAJERA: CERTAINLY, YOUR HONOR.

WE'RE TALKING ABOUT ATTACHMENT PAGE NO. 5, ON LINES 22 TO 24.

THE COURT: ALL RIGHT.

MS. NAJERA: BASICALLY, WHAT OFFICER WALL SAYS IS THAT HE DISCOVERED A WHITE PICKUP – A WHITE CHEVROLET PICKUP TRUCK PARKED ON THE STREET ACROSS FROM 214 THIRD STREET AND BASSET.

THAT I CONTEND, YOUR HONOR –

THE COURT: THAT'S DEPUTY SIMPKINS AND SPITULSKI?

MS. NAJERA: THIS IS WHAT DEPUTY WALL STATED DEPUTY SIMPKINS AND DEPUTY SPITULSKI TOLD HIM.

THE COURT: RIGHT.

MS. NAJERA: YOUR HONOR, I MAINTAIN THAT IS A TYPOGRAPHICAL ERROR, AND HAD IT BEEN ACCOMPANIED BY FURTHER STATEMENTS THAT THE ADDRESS WAS ACROSS THE STREET AND IMMEDIATELY ADJACENT TO THIS DRIVEWAY OR WORDS TO THAT EFFECT, THEN I CAN UNDERSTAND COUNSEL'S CONCERN THAT THERE WAS A MISSTATEMENT. BUT ALL IT STATES IS SIMPLY WHERE IT WAS FOUND AND WITHOUT ANY MORE OF A COMMENT SUCH AS COUNSEL HAS ADDED THAT – A COMMENT, IT'S DOWN THE [7] STREET 80 YARDS.

HE DOESN'T PUT IT CLOSE TO THE DRIVEWAY. HE DOESN'T PUT IT ANYWHERE NEAR – HE DOESN'T MAKE A REPRESENTATION THAT IT WAS CLOSER TO THE DRIVEWAY THAN IT REALLY WAS. HE SIMPLY PUTS THE ADDRESS WHERE WAS IT FOUND.

AND I THINK IT WAS TRANSPOSED, AND I THINK WITHOUT THOSE STATEMENTS – AND COUNSEL IS KIND OF RELYING ON THOSE STATEMENTS AND ADDING THEM WHEN HE HAS, BECAUSE HE DID, IN FACT, DO THAT RIGHT NOW.

MR. ESCOBEDO: YOUR HONOR, I HAVE A VIDEO WHICH INDICATES – AND PHOTOGRAPHS

WHICH INDICATE THERE IS NO SUCH ADDRESS AS 214. ON THE CURB MARKERS, THERE IS A 210 AND 220. THEN THE MOUTH TO THIS ROADWAY ON THE OTHER SIDE IS 222. NO 214.

THE COURT: OKAY.

MR. ESCOBEDO: AND I WOULD LIKE TO HAVE DEPUTY WALL TESTIFY IF IT'S A TRANS – EITHER TRANSPOSED OR IT'S A MISTAKE, LET HIM TESTIFY.

AND I'D LIKE SIMPKINS AND SPITULSKI TO THEN TESTIFY THAT THE CORRECT ADDRESS WAS 241. THEY CAN IDENTIFY THROUGH THE VIDEO WHERE THE VEHICLE WAS FOUND. AND I BELIEVE THAT IS A MATERIAL FACT.

THE COURT: ALL RIGHT.

MR. ESCOBEDO: IF IT'S FOUND DOWN THE ROAD, THEN THE LIKELIHOOD THAT TIRE TRACKS WERE ABLE TO BE FOLLOWED FROM 241 IS VERY, VERY [8] UNLIKELY, IMPROBABLE.

THE COURT: ALL RIGHT.

YOU MAY CALL YOUR FIRST WITNESS.

MR. ESCOBEDO: YOUR HONOR, I'D LIKE TO CALL OFFICER SPITULSKI.

DANIEL SPITULSKI, CALLED AS A WITNESS ON BEHALF OF DEFENDANT LONGORIA, WAS SWORN AND TESTIFIED AS FOLLOWS:

THE CLERK: WOULD YOU RAISE YOUR RIGHT HAND TO BE SWORN, PLEASE.

YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

THE WITNESS: I DO.

THE CLERK: PLEASE STEP FORWARD AND BE SEATED.

MR. ESCOBEDO: YOUR HONOR, THERE WILL BE A MOTION TO EXCLUDE ALL OTHER WITNESSES.

THE COURT: ALL RIGHT. GRANTED.

THE CLERK: STATE AND SPELL YOUR FULL NAME FOR THE RECORD, PLEASE.

THE WITNESS: MY NAME IS DANIEL SPITULSKI. SPELLING IS S-P-I-T-U-L-S-K-I.

THE CLERK: THANK YOU.

[9] THE COURT: YOU READY TO PROCEED?

WHAT'S THE CONTEMPLATED ESTIMATION OF THIS CASE?

MR. ESCOBEDO: THIRTY MINUTES, YOUR HONOR. WE HAVE FOUR WITNESSES.

MS. NAJERA: YOUR HONOR, ON THE ISSUE OF – OF THE ADDRESS, 241 THIRD STREET, APPARENTLY, IS THE ONLY SHOWING COUNSEL HAS MADE AS TO THE DIRECT CONSCIOUS DISREGARD OF THE FACTS. MY UNDERSTANDING FROM THEIR MOVING PAPERS, FROM THE LAW AND HOW WE ALL

KIND OF ENVISION THIS, FOR THEM TO BE ENTITLED TO A HEARING, THEY HAVE TO MAKE A PRELIMINARY SHOWING OF SOME TRULY STANDARD OF RECKLESS DISREGARD FOR THE TRUTH OR TRUE MATERIAL OMISSION. I CONTEND TO THE COURT THAT IF THEIR ONLY DISREGARD OF THE FACT, THE ONLY MISTAKE THEY FIND HERE IS A TRANSPOSED NUMBER, THAT, THAT DOESN'T MEET THE FRANKS STANDARD.

THE COURT: WELL, BUT HE'S SAYING IT'S NOT A TRANSPOSED NUMBER. HE'S SAYING THE ADDRESS DOESN'T EVEN EXIST, 214 DOESN'T EVEN EXIST. SO WE WILL HEAR ABOUT THAT.

MS. NAJERA: OKAY. JUST SO WE UNDERSTAND THAT'S WHAT WE ARE LIMITING THIS INQUIRY TO.

MR. ESCOBEDO: NO, YOUR HONOR, IN MY MOVING PAPERS, I INDICATED SEVERAL OTHER FACTORS WHICH I BELIEVE WOULD CAUSE THIS SEARCH WARRANT TO BE FOUND TO BE INVALID. I ALSO INDICATED THE ISSUE OF THE TIRE TRACKS. I ALSO INDICATED THE –

[10] THE COURT: WELL, WHAT ISSUE OF TIRE TRACKS?

MR. ESCOBEDO: WHETHER OR NOT TIRE TRACKS COULD, IN FACT, BE MADE ON THIS TYPE OF MATERIAL AND WHETHER THEY COULD BE FOLLOWED FOR 300 FEET FROM THE POINT OF THE DEFENDANT'S PROPERTY TO THE –

THE COURT: OKAY.

WELL, WE'RE NOT GOING TO SPEND A GREAT DEAL OF TIME ON THAT.

WHAT'S YOUR NEXT ONE?

MR. ESCOBEDO: ALSO THE FACT THE DEPUTY OBSERVED THREE WHEELS ON THE OTHER SIDE OF THIS FENCE, THE DEFENDANT'S PROPERTY. THEY FAILED TO INCLUDE IN THE AFFIDAVIT THAT NOT ONLY WERE THERE THREE WHEELS, BUT THERE WERE APPROXIMATELY 300 WHEELS.

THE COURT: I READ THAT IN YOUR PAPER, AND MY – THE QUESTION TO ME IS SO WHAT? AS SOON AS I READ THAT, SO WHAT THAT THERE ARE OTHER WHEELS?

MR. ESCOBEDO: THE IMPRESSION THAT WAS GIVEN IN THE AFFIDAVIT IS THAT YOU HAVE AN EMPTY LOT, FIRSTLY.

THE COURT: THAT WASN'T THE IMPRESSION AT ALL THAT THE COURT WAS GIVEN WHEN THE COURT READ THIS AFFIDAVIT.

I'M NOT GOING TO SPEND A GREAT DEAL OF TIME ON THAT EITHER.

WHAT'S YOUR NEXT POINT?

[11] MR. ESCOBEDO: THE FACT THAT THE OFFICERS WHEN THEY EXECUTED THE SEARCH WARRANT BROUGHT ALONG A DRUG SNIFFING DOG. IN THE AFFIDAVIT –

THE COURT: COMPLETELY IMMATERIAL TO THIS TYPE OF PROCEEDING.

MR. ESCOBEDO: IN THE AFFIDAVIT, THERE WAS NO MENTION WHATSOEVER OF A POSSIBILITY OF DRUGS WOULD BE FOUND AT THE LOCATION.

THE COURT: AND THE RESPONSE WOULD BE, SO WHAT AGAIN. NOT BEING DISCOURTEOUS, BUT THAT WOULD BE ANYONE'S RESPONSE IN READING THIS CASE. SO WHAT?

MR. ESCOBEDO: IT GOES TO BAD FAITH, YOUR HONOR. IT SHOWS –

THE COURT: WE'RE NOT GOING TO SPEND A GREAT DEAL OF TIME ON THAT. SO FAR, THE COURT HAS AN ADDRESS OF 214 AND 241. AND YOU ARE SUGGESTING THERE IS NO 214 AND THAT'S SUFFICIENT TO WARRANT THE HEARING. OTHER THAN THAT, THERE IS NOTHING HERE.

MR. ESCOBEDO: ALSO, I INDICATE IN MY MOVING PAPERS OTHER ISSUES I WOULD LIKE TO ADDRESS.

THE COURT: LET'S HEAR THEM.

MR. ESCOBEDO: THE TIRE TRACKS. THE OFFICER WILL VIEW SOME VIDEO AS WELL AS PHOTOGRAPHS INDICATING NO WAY CAN TIRE TRACKS BE FOLLOWED.

I HAVE DEPUTY CEBALLOS UNDER SUBPOENA, WHO WILL TESTIFY AS TO CONDITION OF THE ROADWAY AND WHETHER OR NOT TIRE TRACKS COULD BE FOLLOWED FROM WHEREVER THE STOLEN VEHICLE WAS UP TO [12] THE DEFENDANT'S PROPERTY. THE PHOTOGRAPHS AND VIDEO

ARE GRAPHIC EVIDENCE CONTRARY TO WHAT IS FOUND IN THE AFFIDAVIT.

THE COURT: OKAY. WELL, THERE MAY BE SOME LIMITED TESTIMONY IN THAT REGARD, BUT I JUST DON'T – I'M SURE THERE ARE SURFACES WHERE THE TIRE TRACKS WERE VISIBLE.

AND THERE IS SOME TESTIMONY OR SOME INFORMATION IN THE AFFIDAVIT ABOUT ATTEMPTING TO OBLITERATE CERTAIN TRACKS FROM AREAS – FROM AREAS WHERE TIRE IMPRESSIONS COULD HAVE MADE. AND I'M SURE THERE COULD HAVE BEEN SURFACES OVER WHICH THE VEHICLE MAY HAVE TRAVERSED WHERE MAYBE TIRE TRACKS COULD HAVE BEEN LEFT OR COULDN'T. BUT THAT'S NOT GOING TO CAUSE THIS COURT TO SPEND THE NEXT HALF HOUR IN EXAMINATION BECAUSE IT'S JUST NOT THAT MATERIAL TO THIS TYPE OF HEARING.

WHAT IS MATERIAL IS YOUR ASSERTION NOW THERE IS NO 214. AND THAT'S WHY WE'RE HERE.

MR. ESCOBEDO: WELL, MY ARGUMENT IS GOING TO GO BEYOND THAT, YOUR HONOR.

I'M NOT GOING TO BE – WITH THE COURT'S PERMISSION – NOT JUST LIMITED TO THAT ARGUMENT BECAUSE THERE IS NUMEROUS PROBLEMS WITH THE SEARCH WARRANT, ONE OF WHICH IS THE ADDRESS.

THE COURT: ALL RIGHT.

WHERE ARE THE PARTIES ON THE TRIAL? I WANT TO KNOW WHETHER WE'RE GOING FORWARD OR NOT. I [13] NEED TO KNOW THAT.

MS. SANTINI: I'LL GO LOOK FOR MR. MARQUEZ.

THE COURT: ALL RIGHT.

(PAUSE.)

THE COURT: ALL RIGHT. YOU MAY PROCEED WITH YOUR QUESTIONING.

DIRECT EXAMINATION

BY MR. ESCOBEDO:

Q OFFICER – DEPUTY SPITULSKI, DIRECTING YOUR ATTENTION TO AUGUST 3RD, 1999, AT APPROXIMATELY 8:30 A.M., YOU RECALL WHERE YOU WERE?

A YES.

WE WERE IN THE VICINITY OF BASSETDALE AND PROCTOR AVENUE.

I'M SORRY. BASSETDALE. THIRD STREET. THIRD AVENUE AND PROCTOR AVENUE.

THE COURT: THIRD AND WHAT?

THE WITNESS: I BELIEVE IT'S THIRD AND PROCTOR IN THE COUNTY AREA OF BASSET.

Q BY MR. ESCOBEDO: AND WERE YOU WITH ANYBODY AT THAT TIME?

A YES, MY PARTNER, DEPUTY SIMPKINS.

Q DID YOU NOTICE ANYTHING UNUSUAL AT [14] THAT DATE AND TIME?

A YES.

NORTH OF THE LOCATION, WE OBSERVED A WHITE, APPEARED TO BE, CHEVY PICKUP THAT WAS PARKED ON THE WEST SIDE OF THE STREET FACING SOUTH. IT APPEARED TO BE A STRIPED VEHICLE.

Q AND DID YOU FILL OUT A COMPLAINT REPORT REGARDING THIS INCIDENT, DEPUTY?

A DID I FILL OUT – YOU MEAN DID I WRITE THE REPORT?

Q YES.

A I DON'T RECALL IF I DID OR NOT. THERE WAS A LOT WENT ON THAT DAY.

Q I'M GOING TO SHOW YOU A DOCUMENT, IF YOU COULD REFRESH YOUR RECOLLECTION.

A YES, I DID.

Q OKAY. IS THAT YOUR REPORT?

A YES.

Q OKAY.

AND ON THAT REPORT, YOU INDICATED WHERE YOU FOUND THIS VEHICLE, CORRECT?

A THAT'S CORRECT.

Q AND ACCORDING TO THE REPORT WRITTEN ON AUGUST 3RD, 19'99, WHERE, IN FACT, WAS THE VEHICLE FOUND? WHAT ADDRESS?

A THE ADDRESS INDICATED ON THE COMPLAINT REPORT.

Q AND WHAT ADDRESS WOULD THAT BE, [15] DEPUTY?

A I BELIEVE WHAT? 241?

Q IS THAT YOUR TESTIMONY THEN, 241?

A IF IT'S ON THE THING, YES, BECAUSE I GOT THE NUMBER OFF THE CURB.

Q OKAY.

AND EVERYTHING ON THIS DOCUMENT IS TRUE AND CORRECT, DEPUTY?

A IT'S TRUE AND CORRECT AT THAT PARTICULAR TIME AS COULD BE, YES.

THE COURT: 241 WHAT?

THE WITNESS: 241 THIRD AVENUE. IT SHOULD BE REFLECTED.

THE COURT: ALL RIGHT. OKAY.

THAT'S WHERE YOU SAW THIS STRIPED WHITE CHEVY PICKUP?

THE WITNESS: YES.

THE COURT: ALL RIGHT.

Q BY MR. ESCOBEDO: OKAY.

AND, DEPUTY, WHEN YOU OBSERVED THIS VEHICLE, DID IT HAVE ANY TYPE OF WHEELS ON IT?

A IT HAD AN ARRAY OR ASSORTED WHEELS ON IT, FOUR DIFFERENT TYPES.

Q AND THEY WERE ON THE HUBS? THE WHEELS WERE ON THE HUBS?

A TIRES WERE ON THE TRUCK, YES.

Q AND YOU INDICATED THAT YOU WERE ABLE TO OBSERVE TIRE TRACKS LEADING AWAY FROM THE [16] STOLEN VEHICLE, CORRECT?

A YES.

TIRE TRACKS, RIM TRACKS, YES.

Q. AND THE VEHICLE WAS, AT THE TIME YOU OBSERVED IT, PARKED ON A PAVED PUBLIC STREET, CORRECT?

A ASPHALT STREET, CORRECT.

Q OKAY.

AND YOU INDICATED THAT YOU WERE ABLE TO FOLLOW THESE TIRE TRACKS TO A – WHAT YOU – THE WAY YOU DESCRIBE IT, A DRIVEWAY, CORRECT?

A THAT'S CORRECT.

Q NOW, BASED UPON YOUR MEMORY OF THAT DRIVEWAY, HOW LONG WAS THAT DRIVEWAY FROM THE CURB BACK TO THE END OF THE DRIVEWAY TO WHERE THE GATE IS LOCATED?

A IT'S REALLY DIFFICULT FOR ME TO PICTURE. I'D SAY SOMEWHERE BETWEEN TWO, 300 YARDS MAYBE. MAYBE NOT EVEN THAT FAR. I NEVER REALLY – I NEVER REALLY FOCUSED ON HOW FAR IT WAS.

Q TWO TO 300 YARDS?

A POSSIBLY.

YOU KNOW, I'M GUESSING.

Q AND HOW WIDE –

THE COURT: FROM WHERE THE VEHICLE WAS PARKED TO THE MOUTH OF THE DRIVEWAY?

THE WITNESS: NO.

HE'S ASKING ME FROM THE SIDEWALK [17] AREA ABOVE THE APRON TO THE GATE.

THAT'S THE DIRECT – THE LENGTH, THE DISTANCE, CORRECT?

Q. BY MR. ESCOBEDO: CORRECT.

A I'D SAY 200 YARDS MAYBE. MAYBE A LITTLE MORE, GIVE OR TAKE.

Q AND WHAT IN YOUR ESTIMATE WAS THE DISTANCE BETWEEN THE STOLEN VEHICLE AND THE ENTRANCE TO THAT DRIVEWAY?

A THIRTY TO 40 YARDS.

Q AND IN WHAT DIRECTION WAS THE STOLEN VEHICLE FROM – IN RELATION TO THE ENTRANCE TO THE DRIVEWAY?

A IN WHAT DIRECTION? YOU MEAN WHICH WAY WAS IT FACING?

Q RIGHT.

A DRIVEWAY IS ON THE EAST SIDE OF THE STREET. THE TRUCK WAS ON THE WEST SIDE OF THE STREET FACING SOUTH.

Q AND WAS THE TRUCK LOCATED NORTH OR SOUTH OF THE DRIVEWAY?

A SOUTH OF THE DRIVEWAY.

Q SO THE TRUCK WAS LOCATED, IN YOUR ESTIMATE, ABOUT 30 YARDS SOUTH OF THE ENTRANCE TO THIS DRIVEWAY?

A YES.

Q HOW WIDE WAS THAT DRIVEWAY?

A STANDARD TWO-CAR DRIVEWAY, I [18] BELIEVE.

IT'S A STANDARD TWO-CAR APRON OR DRIVEWAY LEADING FROM THE STREET TO THE SIDEWALK, THAT'S CONSIDERED AN APRON, IT'S APPROXIMATELY A TWO-CAR WIDTH.

THE COURT: ONE MOMENT, COUNSEL.

(THERE WAS A DISCUSSION HELD OFF THE RECORD ON AN UNRELATED CALENDAR MATTER.)

THE COURT: ALL RIGHT.

YOU MAY CONTINUE.

MR. ESCOBEDO: OKAY.

Q DEPUTY, I'M GOING TO SHOW YOU A PHOTOGRAPH THAT'S BEEN MARKED AS DEFENSE EXHIBIT A.

DO YOU RECOGNIZE THAT PHOTOGRAPH?

A IT APPEARS TO BE THE DRIVEWAY THAT LEADS FROM ACROSS – FROM THE WEST SIDE OF THE STREET, WEST SIDE OF THIRD AVENUE LOOKING DOWN EAST ON – DOWN THAT DIRT DRIVEWAY.

Q OKAY.

AND COULD YOU PLEASE DESCRIBE WHAT IS LOCATED ON EITHER SIDE OF THAT DRIVEWAY. WHAT DO YOU SEE?

A WELL, THERE IS VEHICLES PARKED ON EITHER SIDE OF IT. FENCE ON THE LEFT – ON THE NORTHSIDE, A CAR WAY DOWN ON THE NORTHSIDE, CARS ON [19] THE – ON THE SOUTH SIDE. AND WAY DOWN AT THE END, YOU CAN SEE THE WHITE GATE.

Q OKAY.

AND DO YOU SEE RESIDENCES, RESIDENTIAL HOUSING ON EITHER SIDE OF THAT DRIVEWAY?

A I DO NOW.

WELL, THERE IS A HOUSE ON THE NORTHSIDE, RIGHT THERE WHERE THE TRUCK IS PARKED, JUST – JUST EAST OF THE CURB. AND THERE IS OTHER HOUSE DOWN THERE. YES, I KNOW ABOUT THEM.

Q OKAY.

NOW, YOU TESTIFIED – OR YOU PUT IN YOUR REPORT THAT YOU WERE ABLE TO FOLLOW TIRE TRACKS, CORRECT?

A TRACKS, YES.

Q OKAY. AND YOU ARE INDICATING – IS IT YOUR TESTIMONY THAT YOU WERE ABLE TO FOLLOW THE TIRE TRACKS FROM THE LOCATION OF THE STOLEN TRUCK ACROSS THE PAVED STREET WHICH IS DEPICTED IN THAT PHOTOGRAPH?

A UH-HUM.

Q AND THE TIRE TRACKS, WHAT DO YOU – CAN YOU PLEASE. BE MORE SPECIFIC WHEN YOU DESCRIBE THE TIRE TRACKS.

A OKAY.

WHEN WE DISCOVERED THE VEHICLE, THE LEFT FRONT –

[20] THE COURT: ONE MOMENT.

WE HAVE GOT TESTIMONY THAT'S INCONSISTENT WITH YOUR QUESTION. YOU KEEP SAYING TIRE TRACKS AND THE WITNESSES IS SAYING TRACKS. AND HIS EARLIER RESPONSE WAS TIRES AND RIM TRACKS, I BELIEVE.

YOU WANT TO CLARIFY THAT?

MR. ESCOBEDO: OKAY.

Q IN YOUR ORIGINAL REPORT, DEPUTY, HOW DID YOU DESCRIBE WHAT MARKS THAT YOU OBSERVED ON THE ROADWAY?

A I BELIEVE I DESCRIBED THEM AS BEING MARKS LEFT BY THE OUTER PORTION OF A TIRE RIM.

IF I – IF I – WITHOUT LOOKING AT THE REPORT. BUT I BELIEVE I SAID THAT THE MARK WAS LEFT BY THE RIM BECAUSE THE TIRE WAS LOW ON AIR, ALMOST FLAT ON THE LEFT FRONT SIDE OF THE TRUCK.

Q AND DID YOU INDICATE THAT INFORMATION TO OFFICER WALLS, DEPUTY WALL?

A YES, I DID.

Q SO IF DEPUTY WALL PUT IN THE AFFIDAVIT THAT YOU OBSERVED TIRE TRACKS, HE WOULD BE INCORRECT THEN, RIGHT?

A WELL, TIRE TRACKS –

MS. NAJERA: OBJECTION, ARGUMENTATIVE AS TO WHAT DEPUTY WALL WOULD PUT IN HIS REPORT.

THE COURT: SUSTAINED.

[21] Q BY MR. ESCOBEDO: OKAY.

SO IT'S YOUR TESTIMONY THAT YOU WERE ABLE TO OBSERVE THESE TIRE MARKS, TIRE TRACKS ACROSS THE 40 FOOT WIDE PAVED PUBLIC STREET, CORRECT?

A YES.

Q AND THEN FOLLOWED THEM THIS 200 – 200 TO 300 YARDS DOWN THE ROADWAY?

A YES.

Q NOW, WOULD YOUR CHARACTERIZATION OF THIS ROADWAY BE A ROAD AREA – BE A ROADWAY OR DRIVEWAY AFTER CONSIDERING THE LENGTH OR WIDTH.

A I WOULD SAY A COMBINATION OF DIRT AND HARD ROCK.

Q THE QUESTION WAS HOW WOULD YOU DESCRIBE IT, AS A ROADWAY OR DRIVEWAY?

A I CONSIDER IT A DRIVEWAY.

Q AS IF SOMEONE – AS A CONCRETE DRIVEWAY LEADING UP TO SOMEONE'S HOUSE?

A NO, A DRIVEWAY, A DIRT DRIVEWAY OR DIRT – IT'S NOT A COUNTY ROAD, SO, THEREFORE, IT CAN'T BE CONSIDERED A ROAD. I WOULD JUST SAY A DRIVEWAY.

THE COURT: DO YOU KNOW WHETHER IT'S ON PRIVATE OR PUBLIC PROPERTY?

THE WITNESS: THAT I HONESTLY DON'T KNOW.

THE COURT: OKAY.

ALL RIGHT. WE'RE GOING TO HAVE [22] ADDRESS THE TRIAL MATTER AT THIS TIME.

YOU WANT TO STEP DOWN FOR A MOMENT, DEPUTY.

RECESS THIS MATTER WHILE WE ADDRESS ANOTHER MATTER.

(THE COURT HEARD OTHER UNRELATED CALENDAR MATTERS.)

THE COURT: ALL RIGHT. YOU MAY RESUME YOUR EXAMINATION.

MR. ESCOBEDO: YES.

DIRECT EXAMINATION (RESUMED.)

BY MR. ESCOBEDO:

Q DEPUTY SPITULSKI, IN ADDITION TO THE COMPLAINT REPORT, YOU ALSO FILLED OUT A VEHICLE REPORT REGARDING THE STOLEN PICKUP?

A CHP-180, SIR?

Q THAT IS CORRECT.

A I BELIEVE I DID.

Q AND ON THAT FORM, WHERE DID YOU INDICATE WHERE – WHERE DID YOU INDICATE WHERE THE STOLEN TRUCK WAS LOCATED?

A I'M NOT SURE, SIR, WHETHER I PUT THE SAME ADDRESS OR THE HUNDRED BLOCK OF THE – WHERE THE TRUCK WAS LOCATED FOR THE PURPOSES OF THE [23] TOW COMPANY.

Q OKAY.

LET ME SHOW YOU THE DOCUMENT TO REFRESH YOUR RECOLLECTION.

AND AFTER REVIEWING THAT, CAN YOU TELL ME WHERE YOU INDICATED THE TRUCK WAS LOCATED?

A I INDICATED THE SAME ADDRESS, 241 THIRD AVENUE IN BASSET.

Q NOW, I'M GOING TO SHOW YOU A VIDEO, DEPUTY, IF YOU CAN PLEASE TURN TO YOUR RIGHT.

I WANT YOU TO DESCRIBE WHAT YOU SEE.

OOPS, I'M SORRY.

OKAY. RIGHT THERE.

IT'S A LITTLE BLURRY, BUT CAN YOU PLEASE TELL THE COURT WHAT YOU SEE.

A OKAY.

IT APPEARS TO BE A DIRT ROAD.

Q IS THAT –

A THAT'S THE DIRT ROAD THAT WE'RE TALKING – THAT IS IN QUESTION.

Q OKAY.

A IT'S EITHER – IT'S CONSIDERED – I CONSIDER IT A DRIVEWAY BECAUSE IT LEADS TO VARIOUS HOUSES WHO IN TURN HAVE THEIR OWN DRIVEWAYS.

Q OKAY.

[24] LET ME CONTINUE ON HERE.

NOW, RIGHT THERE, CAN YOU PLEASE DESCRIBE – YOU INDICATE IN YOUR COMPLAINT REPORT AND VEHICLE REPORT THAT THE STOLEN VEHICLE WAS RECOVERED AT 241 THIRD STREET, CORRECT?

A UM-HUM.

Q AND WHERE WOULD THAT BE IN RELATIONSHIP TO WHAT YOU SEE HERE ON THE VIDEO SCREEN?

A THAT I COULDN'T TELL YOU, SIR. I'D HAVE TO – LOOKING AT THIS BLOCK, I DON'T – I COULDN'T TELL YOU. I KNOW HE – IF I'M NOT MISTAKEN –

Q YOU INDICATED THAT WAS SOUTH OF –

A IT'S SOUTH, THAT'S CORRECT. WE'RE LOOKING SOUTH AT THIS PARTICULAR POINT.

Q SO IT WOULD BE SOMEWHERE IN THIS DIRECTION THEN, CORRECT?

A PROBABLY.

Q OKAY.

LET ME BACK IT UP HERE A MINUTE.

IT – IT WOULD APPEAR YOU WERE DIRECTLY ACROSS THE STREET FROM THE DRIVEWAY.

A CORRECT.

(PAUSE.)

Q OKAY.

[25] NOW, RIGHT THERE. JUST BEFORE THE CAMERA MOVED, WHAT NUMBER DID YOU SEE THAT WAS INDICATED ON THE CURB?

A 210.

OKAY.

AND RIGHT THERE, WHAT NUMBER DO YOU BELIEVE THAT INDICATES? LET ME –

A LOOKED LIKE IT MAY HAVE BEEN 220.

Q OKAY.

DID YOU BETWEEN 210 AND 220 SEE ANY OTHER NUMBER PAINTED ON THE CURB?

A NO.

Q OKAY.

OKAY. SO YOUR TESTIMONY WOULD BE THAT THE VEHICLE ACTUALLY WAS LOCATED SOMEWHERE AROUND THIS AREA, CORRECT?

A I DON'T KNOW HOW FAR DOWN BUT JUDGING FROM WHERE YOU ARE SUPPOSEDLY STANDING ACROSS FROM THE DRIVEWAY, IT WOULD BE SOUTH OF YOUR LOCATION OR SOMEWHERE ALONG THE CURBLINE THERE.

Q THE VEHICLE WAS NOT FOUND DIRECTLY IN FRONT OF THE –

A NO.

Q – ENTRANCE OF THE DRIVEWAY?

AND IT'S YOUR TESTIMONY YOU WERE ABLE TO FOLLOW TIRE TRACKS, TIRE GOUGES FROM THE 241 LOCATION ON THE PAVED ROAD APPROXIMATELY 30 YARDS DOWN THIS THREE – 200 TO 300 YARD DRIVEWAY, IN YOUR [26] WORDS, CORRECT?

A YES.

AND, AGAIN, THE DISTANCE BETWEEN THE – THE SIDEWALK AND THE FAR GATE I'M GUESSING AT. I COULDN'T SEE HOW FAR IT WAS, HOW FAR IT –

Q YOUR TESTIMONY WAS 200 YARDS.

A OKAY.

IT MAY BE, MAY NOT. IT'S DIFFICULT TO TELL ON THIS, AND I'M NOT THAT GREAT AT DISTANCE AS FAR AS –

Q OKAY.

NOW, LET'S SEE. WAS THE CONDITION OF THE ROADWAY SIMILAR TO WHEN YOU FIRST OBSERVED THE STOLEN VEHICLE AS IT IS DEPICTED IN THIS VIDEO?

A IT APPEARS TO BE. I'D HAVE TO GET RIGHT ON IT AND LOOK AT IT. IT APPEARS THE SAME.

Q OKAY.

THIS IS CONSISTENT WITH THE ROADWAY BACK ON AUGUST 2ND, 1999?

A ARE YOU WALKING DOWN THE DRIVEWAY AT THIS POINT?

Q YES.

A IT WOULD APPEAR TO BE.

Q IS THERE ANY PARTICULAR SIDE THESE TRACKS WERE LOCATED, ON THE SOUTH SIDE OF THE ROADWAY OR NORTHSIDE OF THE ROADWAY, DO YOU RECALL, OR WERE THEY RIGHT DOWN THE MIDDLE?

A I THINK THEY WENT FROM – I MAY BE [27] MISTAKEN BUT I BELIEVE THEY WENT FROM JUST GRADUALLY NORTH OF THE CENTER LINE OR CENTER OF THE ROAD ON DOWN TO THE GATED AREA. I DON'T THINK IT WENT IN A – A CONFIGURATION. I THINK IT WAS PRETTY MUCH A STRAIGHT LINE.

Q AND THIS IS THE GATE THAT YOU OBSERVED ON THAT DATE, CORRECT?

A THE ONE TO THE RIGHT, YEAH.

Q NOW, ON THE DAY IN QUESTION, WAS THE BACKYARD OR THIS AREA IN THIS CONDITION ON AUGUST 3RD?

A I VENTURE TO SAY IT WAS WORSE.

Q WORSE, MEANING THAT THERE WAS –

A THERE WAS A LOT MORE CARS BACK THERE AND JUNK AND DEBRIS.

Q AND THAT INCLUDED WHEELS AND TIRES?

A I WOULD IMAGINE SO.

Q OKAY.

DID YOU ALSO OBSERVE A ROLL OFF, ONE OF THOSE METAL CONTAINERS, CARGO BOXES? DID YOU OBSERVE THAT?

A WHEN?

Q OKAY.

LET ME PUT IT RIGHT THERE.

WELL, I DON'T KNOW IF YOU CAN SEE. WHAT DO YOU SEE RIGHT THERE?

RIGHT THERE.

A OH, ALL THE TIRES AND THE RIMS.

[28] Q OKAY.

NOW, WAS THAT THE SIMILAR CONDITION AS TO WHEN YOU FIRST OBSERVED IT ON AUGUST 3RD?

A WELL, IT WOULD BE DIFFICULT TO SAY YES OR NO BECAUSE I REALLY DIDN'T PAY MUCH ATTENTION TO THAT.

Q OKAY.

BUT YOU DID OBSERVE A LOT OF AUTO PARTS?

A UH-HUH.

Q IT WAS A JUNK YARD BACK THERE, VIRTUALLY?

A AUTO PARTS, YES.

MR. ESCOBEDO: OKAY.

NOW –

I HAVE NOTHING FURTHER WITH THIS DEPUTY, YOUR HONOR.

THE COURT: ANY QUESTIONS?

CROSS-EXAMINATION

BY MS. NAJERA:

Q JUST AS TO WHEN YOU GOT TO THE BACK WHERE THE WHITE GATE WAS, WHERE THE SEARCH WARRANT WAS SERVED, THERE WAS AN AREA THERE THAT YOU MADE AN OBSERVATION OF AROUND THE DIRT; IS THAT CORRECT?

A YES.

[29] Q AND WHAT WAS THAT OBSERVATION?

A THE OBSERVATION WAS THAT ON THE INTERIOR PORTION OF THE GATE, ON THE OTHER SIDE OF THE GATE WAS AN AREA, APPROXIMATELY, I'D SAY 15, 20 FEET SQUARE HAD BEEN RAKED OVER AND WATERED. IT LOOKED AS THOUGH SOMEBODY HAD RAKED, TAKEN A REGULAR RAKE AND JUST RAKED IT OVER IT, WATERED IT DOWN AND THEN RAKED OVER IT AGAIN AND WATERED IT DOWN.

TO THE IMMEDIATE RIGHT OF THE AREA –

THE COURT: I'M SORRY.

YOU ARE REFERRING TO THE INSIDE?

THE WITNESS: I'M TALKING FACING THE GATE LOOKING TO THE LINE SIDE OF THE PROPERTY, TO THE IMMEDIATE RIGHT OF THE GATED

AREA, I SAW – WELL, I SAW WHAT APPEARED TO BE A BEDLINER STANDING ON END. I BELIEVE IT MAY HAVE BEEN LEANING AGAINST SOMETHING.

DIRECTLY ON THE OTHER SIDE OF THIS PADDED AREA OR THIS WET DOWN, RAKED AREA APPEARED TO BE SOMETHING ON A – EITHER A WOODEN PALLET, A PIECE OF WOOD OR SOMETHING OF THIS NATURE. AND IT APPEARED TO BE – IT COULD HAVE BEEN A MOTOR, IT COULD NOT HAVE BEEN, I DON'T KNOW. IT WAS COVERED WITH, BELIEVE, AN ORANGE TARP. I COULDN'T – WE COULDN'T SEE AROUND IT OR ANY – GET A GOOD OBSERVATION OR A GOOD VIEW TO OBSERVE WHAT WAS UNDER IT.

TO THE LEFT OF THE GATED AREA, THERE WERE TIRES AND RIMS. BUT THE TIRES AND RIMS [30] THAT WE SAW DIRECTLY TO THE LEFT MATCHED THE SAME TIRE AND RIM THAT WAS ON THE LEFTHAND FRONT SIDE TRUCK – OF THE TRUCK THAT WE HAD JUST RECOVERED.

THE COURT: WAS THERE SOMETHING SPECIAL ABOUT THE TIRE?

THE WITNESS: WELL, IT'S A WHITE – I DON'T KNOW THE PROPER NAME FOR IT, BUT IT WAS WHITE RIM, WHITE SPOKED RIM THAT WAS PAINTED – IT WAS WHITE. AND I'M NOT SURE WHETHER IT HAD RED LINES ON IT OR NOT. BUT I KNOW IT WAS A SPOKED RIM AND WAS WHITE.

AND WHAT CAUGHT OUR EYE IS THE FACT THAT – OR CAUGHT MY EYE, THE FACT THERE WAS

THREE OF THEM SITTING RIGHT THERE NEXT TO THE FENCE, THE SAME THING THAT WAS ON THE TRUCK.

Q BY MS. NAJERA: NOW ONE THING JUST FOR POINT OF CLARIFICATION.

DID YOU BRING A NARCOTICS DOG WHEN YOU FIRST ARRIVED AT THE PLACE WITH A – WITH A SEARCH WARRANT?

A NO.

Q WAS A DOG BROUGHT IN AFTER NARCOTICS WERE FOUND AT THE LOCATION?

A YES. AFTER – AFTER SOMEBODY DISCOVERED A SUBSTANTIAL AMOUNT.

MS. NAJERA: I HAVE NOTHING FURTHER.

MR. ESCOBEDO: CAN I CUE THIS UP, YOUR HONOR? I HAVE ONE MORE SCENE I WANT TO SHOW THE DEPUTY.

[31] REWIND IT HERE.

REDIRECT EXAMINATION

BY MR. ESCOBEDO:

Q DEPUTY, WHAT I'M GOING TO SHOW YOU IS A VIDEO THAT WAS TAKEN ON THE DAY THAT THE SEARCH WARRANT WAS EXECUTED.

THE VIDEO WAS TAKEN BY ONE OF YOUR DEPUTIES.

WERE YOU ON THE TEAM THAT EXECUTED THE SEARCH WARRANT, DEPUTY?

A YES.

Q OKAY.

DO YOU RECALL ONE OF YOUR DEPUTIES VIDEOTAPING THE SCENE?

A MY CONCERN WAS – I HAD OTHER – OTHER CONCERNS OTHER THAN VIDEO.

Q SO YOUR TESTIMONY IS YOU DON'T REMEMBER?

A WELL, THERE WAS SOMEBODY THAT WAS VIDEOTAPING, YES, I KNEW THAT.

Q SOMEBODY WAS VIDEOTAPING?

A SOMEBODY WAS VIDEOTAPING. I'M NOT SURE WHO WAS DOING – WHO WAS DOING THE VIDEOTAPING.

MR. ESCOBEDO: OKAY.

SORRY, YOUR HONOR. I WOULD HAVE [32] THIS CUED UP. I HAVE TWO VIDEOS ON ONE TAPE SO I GOT TO GO BACK AND FORTH HERE.

(PAUSE.)

MR. ESCOBEDO: OKAY.

Q JUDGING FROM THIS VIDEO, THERE IS LITERALLY HUNDREDS OF AUTO PARTS ON THAT PROPERTY, CORRECT?

A UM-HUM, YEAH. YES.

Q AND WHEN – ON AUGUST 3RD WHEN YOU LOOKED OVER THAT CHAIN LINK FENCE – WELL, STRIKE THAT.

THIS VIDEO WAS TAKEN THE DAY AFTER YOU OBSERVED THE STOLEN TRUCK, CORRECT, AND MADE YOUR OBSERVATIONS OVER THE CHAIN LINK FENCE, CORRECT?

A I'M NOT SURE IF IT WAS A DAY OR TWO AFTER. I DON'T REMEMBER.

Q RIGHT THERE.

OOPS.

A THE BLUE CONTAINER?

Q YEAH.

A THE BLUE CONTAINER WAS NOT THERE AT THE TIME OF OUR OBSERVATION.

Q OKAY.

HOW ABOUT ALL THESE – LET'S SEE. RIGHT THERE. DID YOU OBSERVE THESE HUNDRED OR SO TIRES STACKED ON THE DAY OF YOUR OBSERVATION ON [33] AUGUST 2ND?

A CAN YOU PLAY IT BACK?

BACK IT UP AND PLAY IT AGAIN A LITTLE BIT.

(PAUSE.)

Q RIGHT THERE.

DID YOU OBSERVE ALL THESE WHEELS OF TIRES ON THE DAY THAT YOU MADE YOUR OBSERVATION FROM THE GATE?

A ALL THOSE ON THE RACK APPEAR – I REMEMBER SEEING, YES.

THE ONES DIRECTLY IN FRONT OF THAT CONTAINER, I DON'T REMEMBER BECAUSE THAT'S WHERE THAT TARP THING WAS THAT – THAT WE HAD LOCATED OR SAW.

Q DID IT INDICATE THAT THE PROPERTY OWNER WAS ATTEMPTING TO CLEAN UP THE AREA WHEN YOU OBSERVED THE BACK – THE BACK AREA ON AUGUST 2ND?

MS. NAJERA: I'M GOING TO OBJECT, CALLS FOR SPECULATION.

THE WITNESS: I DON'T KNOW.

THE COURT: OVERRULED.

MR. ESCOBEDO: NOTHING FURTHER, YOUR HONOR.

THE COURT: ANYTHING FURTHER?

MS. NAJERA: NOTHING FURTHER, YOUR HONOR.

THE COURT: THANK YOU, SIR.

YOU MAY STEP DOWN.

[34] MR. POPE: YOUR HONOR, MAY I ASK SOME QUESTIONS?

THE COURT: WELL, I HAVE A JURY PANEL COMING IN AT 1:30.

MR. POPE: I'LL BE BRIEF AS I CAN.

THE COURT: ALL RIGHT. YOU MAY.

MR. POPE: THANK YOU.

CROSS-EXAMINATION

BY MR. POPE:

Q OFFICER SPITULSKI, YOU HAVE KNOWN MY CLIENT, MR. CUSKEY, FOR HOW LONG, SIR?

MS. NAJERA: I'M GOING TO OBJECT AS IRRELEVANT.

THE COURT: I'M SORRY. I'LL NEED TO HEAR THE QUESTION.

MR. POPE: I WAS INQUIRING HOW LONG THE OFFICER HAS KNOWN MY CLIENT.

GOING TO MOTIVE.

THE COURT: OVERRULED.

MR. POPE: THANK YOU.

THE WITNESS: OH, I DON'T KNOW. MAYBE A YEAR AND A HALF.

Q BY MR. POPE: ALL RIGHT.

AND YOU HAVE KNOWN HIM IN CONNECTION WITH YOUR ACTIVITIES AS PART OF THE LOS ANGELES COUNTY CODE ENFORCEMENT TEAM, IS THAT CORRECT?

[35] A YES.

Q AND YOU HAVE BEEN ONTO THAT PROPERTY, LET'S SAY, BEFORE THE DATE OF THESE OBSERVATIONS HOW MANY TIMES, SIR?

A I'D SAY TWICE, I BELIEVE. ONCE WITH THE CODE ENFORCEMENT.

AND I HAD BEEN TO THE PROPERTY MORE THAN TWICE, BUT I HAD BEEN ON THE PROPERTY, I BELIEVE, TWICE.

Q HOW MANY TIMES HAVE YOU BEEN TO THE PROPERTY?

A OH, I DON'T KNOW. MAYBE FOUR OR FIVE.

Q ALL RIGHT.

AND EACH OCCASION, YOU OBSERVED WHAT YOU CONSIDERED TO BE A – NON-HEALTHY CONDITIONS, NAMELY, THE ACCUMULATION OF TIRES, AUTO PARTS AND SO ON, IS THAT CORRECT?

MS. NAJERA: I'M GOING TO OBJECT AS IRRELEVANT.

THE COURT: OFFER OF PROOF?

MR. POPE: YES, YOUR HONOR.

WHAT WE'RE TRYING TO SHOW IS THAT THIS WHOLE SEARCH WARRANT WAS BASED UPON THE OFFICERS', NO. 1, DISLIKE FOR MY CLIENT AND, NO. 2, A DESIRE TO OBTAIN EVIDENCE IN ITS ENFORCEMENT TEAM ACTIVITIES.

THE COURT: SUSTAINED.

[36] THE WITNESS: I –

THE COURT: THE OBJECTION WAS SUSTAINED.

THE WITNESS: I'M SORRY.

THE COURT: NEXT QUESTION.

Q BY MR. POPE: SIR, YOU WERE A DEFENDANT IN A FEDERAL LAWSUIT FILED BY MY CLIENT IN 1998, IS THAT CORRECT?

A I DON'T BELIEVE SO.

MS. NAJERA: OBJECTION, IRRELEVANT.

THE COURT: OVERRULED.

Q BY MR. POPE: WERE YOU AWARE THAT MEMBERS OF THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, TO INCLUDE YOUR – YOUR PARTNER, SIMPKINS, WERE SUED BY MY CLIENT IN FEDERAL COURT?

MS. NAJERA: OBJECTION, IRRELEVANT.

THE COURT: OVERRULED.

THE WITNESS: I WAS TOLD THAT THERE WAS A LAWSUIT, YES.

Q BY MR. POPE: ALL RIGHT.

AND YOU WERE TOLD THAT BY WHOM?

A OH, SEVERAL PEOPLE.

Q ALL RIGHT.

WOULD YOU CARE TO NAME ONE OF THE PEOPLE?

A OKAY. MY SERGEANT, FOR ONE. THE YOUNG LADY THAT – THE ABATEMENT TEAM MANAGER THAT WENT OUT TO HIS PROPERTY, THAT WAS ANOTHER ONE THAT ALSO TOLD ME.

[37] Q AND YOU – YOU FELT A CERTAIN AMOUNT OF ANIMOSITY TOWARDS MR. CUSKEY BEHIND THAT LAWSUIT, IS THAT CORRECT?

A NO. I HAVE NEVER HAD ANY DEALINGS WITH MR. CUSKEY.

Q YOU INDICATED THAT YOU SAW – MAYBE I DIDN'T UNDERSTAND. WAS IT YOU SAW GOUGES IN THE ROAD OR YOU SAW WHEEL TRACKS WITH TREADS ON THEM? WHICH ONE WAS IT?

A ALL RIGHT.

SIR, THE EASIER WAY TO EXPLAIN IT WOULD BE THE TIRE ON THE LEFT FRONT SIDE OF THE TRUCK WAS ALMOST FLAT. AND IN ITS CONDITION, IF – IF YOU PUSH A CAR AND TURN A WHEEL ON A ROADWAY WITH THAT CONDITION, THE WEIGHT IS GOING TO TRANSFER TO THE ONE EDGE OF THE TIRE RIM. THE TIRE RIM IN THAT RESPECT IS GOING TO MARK THE ASPHALT. THAT'S WHAT I FOLLOWED FROM WHERE THE TRUCK WAS TO THE DRIVEWAY.

Q SO, AS I UNDERSTAND IT, YOU FOLLOWED WHAT APPEARED TO BE THE MARKINGS FROM ONE SINGLE TIRE?

A THAT'S CORRECT.

Q AND THOSE MARKINGS WERE IN THE NATURE OF A GOUGE; IS THAT CORRECT?

A I WOULDN'T SAY A GOUGE. I'D JUST SAY LIKE A GOOD SCRATCH.

Q ALL RIGHT.

AND THAT SCRATCH WOULD HAVE BEEN [38] DONE BY THE METAL; IS THAT CORRECT?

A YES.

Q THIS LEFT FRONT TIRE, WAS IT STILL ON THE VEHICLE WHEN YOU EXAMINED IT?

A YES.

Q AND WAS THAT LEFT TIRE CUT IN ANY FASHION?

YES OR NO.

A NO, NOT TO MY KNOWLEDGE. I DIDN'T SEE IT.

MR. POPE: THANK YOU.

NOTHING FURTHER.

THE COURT: ANYTHING FURTHER FROM THIS WITNESS?

MS. NAJERA: NOTHING FURTHER, YOUR HONOR.

MR. ESCOBEDO: YES.

FURTHER REDIRECT EXAMINATION

BY MR. ESCOBEDO:

Q YOU INDICATED BY A QUESTION TO THE DEPUTY DISTRICT ATTORNEY THAT YOU BROUGHT THE DRUG DOG AFTER YOU FOUND NARCOTICS; IS THAT RIGHT?

A YES. HE WAS NOTIFIED AFTER SOMEBODY HAD FOUND SOME NARCOTICS.

Q NOW, ACCORDING TO YOUR POLICE REPORT, YOU ASKED SUBJECT OJALA FOR A CONSENT TO ENTER AND SEARCH HIS ROOM, CORRECT?

[39] A THAT POLICE REPORT, SIR, I DON'T KNOW. I DIDN'T TALK TO MR. OJALA, I DON'T BELIEVE.

Q DID YOU NOT, YOUR TEAM, SEARCH THE ROOM WITH THE AID OF SERGEANT BLUHER (PHONETIC) AND HIS CANINE DOG, SHADOW, AND THAT'S WHEN THE NARCOTICS WERE FOUND?

A THERE WAS – THERE WAS SOMEBODY THAT WENT UP IN THE ROOM WITH A DOG, YES. IT WAS NOT ME.

Q SO THE DOG – THE NARCOTICS WAS FOUND WITH THE AID OF THE DOG, CORRECT?

A I ASSUME SO, YES. I WASN'T THERE.

Q THE NARCOTICS WERE NOT FOUND PRIOR TO THE DOG COMING ONTO THE PROPERTY?

A WRONG. THERE WERE NARCOTICS FOUND PRIOR TO THE DOG BEING NOTIFIED TO COME TO THE LOCATION.

Q AND THAT'S INCLUDED SOMEWHERE IN THE POLICE REPORT?

A I WOULD ASSUME SO.

MR. ESCOBEDO: NOTHING FURTHER, YOUR HONOR.

THE COURT: ANYTHING FURTHER FROM THIS WITNESS?

MS. NAJERA: NO, YOUR HONOR.

THE COURT: THANK YOU, SIR.

YOU MAY STEP DOWN.

[40] (THE COURT HEARD AN UNRELATED CALENDAR MATTER.)

THE COURT: LET'S GO BACK ON THE RECORD IN THE MATTER OF CUSKEY, ET AL.

ALL RIGHT. YOU MAY CALL YOUR NEXT WITNESS, MR. ESCOBEDO.

MR. ESCOBEDO: YES, YOUR HONOR.

DETECTIVE WALL, PLEASE.

KEITH WALL,

CALLED AS A WITNESS ON BEHALF OF DEFENDANT LONGORIA, WAS SWORN AND TESTIFIED AS FOLLOWS:

THE CLERK: WOULD YOU RAISE YOUR RIGHT HAND TO BE SWORN, PLEASE.

YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

THE WITNESS: YES, I DO.

THE CLERK: PLEASE STEP FORWARD AND BE SEATED.

THE WITNESS: KEITH WALL, W-A-L-L.

THE CLERK: STATE AND SPELL YOUR FULL NAME FOR THE RECORD, PLEASE.

THE WITNESS: KEITH WALL, W-A-L-L.

[41] THE COURT: YOU MAY PROCEED.

DIRECT EXAMINATION

BY MR. ESCOBEDO:

Q DEPUTY WALL, PLEASE STATE YOUR OCCUPATION.

A I'M A SERGEANT WITH THE LOS ANGELES SHERIFF'S DEPARTMENT. I'M STATIONED AT EAST LOS ANGELES STATION.

Q AND HOW LONG HAVE YOU BEEN A PEACE OFFICER?

A 15 YEARS.

Q ON OCTOBER 3RD, 1999, AT APPROXIMATELY 10:30, WERE YOU ON DUTY?

A YES, I WAS.

Q OKAY.

AND WERE YOU CALLED TO THIRD STREET IN THE BASSET AREA OF LOS ANGELES COUNTY?

A YES, SIR.

Q OKAY.

AND YOU WERE CALLED THERE BY DEPUTY SIMPKINS AND SPITULSKI, IS THAT CORRECT?

A YES, SIR.

Q OKAY.

AND DID – ON THAT DATE AND TIME, DID YOU OBSERVE A STOLEN VEHICLE THAT WAS PARKED ON THIRD STREET?

[42] THIRD AVENUE.

A I OBSERVED A WHITE PICKUP TRUCK. I DID NOT KNOW THE STATUS IF IT WAS STOLEN AT THAT POINT.

Q AND WHEN YOU MADE THAT OBSERVATION, WAS THE VEHICLE PARKED ON THE WEST OR EAST SIDE OF THIRD STREET?

A IT WAS ON THE WEST SIDE OF THIRD STREET FACING SOUTHBOUND.

Q AND WAS IT LOCATED AT 241 THIRD AVENUE?

A I BELIEVE THAT WAS THE NUMBER ON THE WEST SIDE OF THE STREET, YES, 241.

Q AND THE VEHICLE WAS PARKED ON THE WEST SIDE OF THE STREET?

A YES. I BELIEVE IT WAS JUST NORTH OF THAT ADDRESS.

Q OKAY.

NOW, LATER THAT DAY, DID YOU HAVE OCCASION TO FILL OUT AN AFFIDAVIT FOR A SEARCH WARRANT?

A NOT THAT DAY, NO.

Q THE NEXT DAY?

A I BELIEVE IT WAS – I'M SORRY.

Q GO AHEAD.

A I BELIEVE IT WAS AUGUST 4TH, THE FOLLOWING MORNING.

Q OKAY. AUGUST 4TH?

[43] A YES, SIR.

Q AND THAT AFFIDAVIT, YOU SUBMITTED THAT TO THE JUDGE OVER AT CITRUS, JUDGE FALLS, CORRECT?

A YES, SIR.

Q AND IN THAT AFFIDAVIT, YOU WERE – THE INFORMATION WAS TO YOUR BEST KNOWLEDGE THAT WAS IN THE DOCUMENT?

A YES, SIR.

Q EVERYTHING WAS TRUE AND CORRECT TO THE BEST OF YOUR KNOWLEDGE?

A WELL, AT THE TIME. I HAVE SINCE NOTICED A COUPLE OF MINOR MISTAKES.

Q OKAY.

AT THE TIME THAT YOU GENERATED THIS DOCUMENT, THE INFORMATION WAS PROVIDED TO YOU BY DEPUTIES SPITULSKI AND SIMPKINS, CORRECT?

A PART OF THE INFORMATION.

Q AS WELL AS YOUR OWN OBSERVATIONS, CORRECT?

A PARTLY. BUT SOME – AFTER SPEAKING TO SOME WITNESSES IN ORANGE COUNTY ALSO.

Q OKAY.

A REGARDING THE STATUS OF THAT PICKUP TRUCK.

Q OKAY.

AT THE TIME YOU FILLED OUT THIS SEARCH WARRANT AFFIDAVIT, YOU INDICATED THAT A STOLEN [44] VEHICLE WAS RECOVERED AT 214 THIRD AVENUE, CORRECT?

A IT SAYS ACTUALLY ACROSS THE STREET FROM 214 THIRD STREET IN BASSET.

AND IT – JUST LET ME CORRECT YOU. AT THE TIME THAT WE RECOVERED THE VEHICLE OR IMPOUNDED IT, I DID NOT KNOW AT THAT POINT IF

THE VEHICLE WAS STOLEN. THAT'S WHY I HAD TO DO SOME FOLLOWUP INVESTIGATION DOWN IN ORANGE COUNTY AND TO IDENTIFY THE VEHICLE TO DETERMINE WHAT THE STATUS OF THE VEHICLE WAS.

Q. OKAY.

BUT THE STATUS DIDN'T AFFECT WHERE THE VEHICLE WAS LOCATED, CORRECT?

A WELL, IT'S HARD TO TELL AT THAT POINT BECAUSE I DON'T KNOW IF SOMEBODY PARKED IT THERE, THAT IT BELONGED TO THE PEOPLE NEXT DOOR. AND I DID NOT KNOW THE STATUS OF THE VEHICLE EXACTLY AT THE INITIAL TIME OF MY INVESTIGATION. I CAME TO FIND OUT MORE LATER THAT EVENING.

Q WHEN YOU ARRIVED ON THE SCENE –

A YES, SIR.

Q – YOU OBSERVED THE VEHICLE PARKED ON THE WEST SIDE OF THE STREET, CORRECT? OF THIRD STREET, CORRECT?

A YES, SIR. FACING SOUTH.

Q SOUTHBOUND.

A YES, SIR.

Q AND IT WAS JUST NORTH OF 241, [45] CORRECT?

A YES. JUST NORTH.

Q OKAY.

NOW, DID YOU ALSO OBSERVE A – A DRIVEWAY JUST NORTH OF THE STOLEN VEHICLE?

A YES. IT WOULD HAVE BEEN SLIGHTLY NORTH AND ON THE OPPOSITE SIDE OR EAST SIDE OF THE STREET.

Q OKAY.

NOW, DID OFFICER SIMPKINS AND SPITULSKI INDICATE TO YOU THAT THEY HAD – WELL, LET ME BACK UP.

WHAT TIME DID YOU ARRIVE ON THE SCENE?

A I BELIEVE – I'M GOING TO ESTIMATE AROUND ELEVEN O'CLOCK.

Q IN THE MORNING TIME, CORRECT?

A SOMETIME AROUND THEN, YES, ON AUGUST 3RD.

Q DID OFFICER – DID DEPUTIES SIMPKINS AND SPITULSKI INDICATE TO YOU THAT THEY HAD OBSERVED TIRE TRACKS LEADING FROM THE STOLEN VEHICLE BACK TO A GATED AREA LOCATED AT THE END OF THE DRIVEWAY?

A YES, THEY DID.

Q OKAY.

DID YOU OBSERVE ANY TIRE TRACKS LEADING FROM THE STOLEN VEHICLE BACK TO THE END OF [46] THE DRIVEWAY? DID YOU PERSONALLY OBSERVE ANY TIRE TRACKS?

A I DID NOT INSPECT THAT PORTION –

Q OKAY.

A – AT THAT POINT.

Q DID YOU OBSERVE ANY TIRE GOUGES LEADING FROM THE STOLEN VEHICLE BACK TO THE END OF THE DRIVEWAY?

A I REALLY DID NOT LOOK FOR IT OR INSPECT IT AT THAT POINT.

Q SO WHEN YOU WROTE DOWN IN YOUR AFFIDAVIT THAT TIRE TRACKS WERE OBSERVED, YOU ARE JUST RELYING ON WHAT DEPUTIES SPITULSKI TOLD YOU, CORRECT?

THE COURT: WHERE IN THE AFFIDAVIT ARE YOU INDICATING THAT, COUNSEL?

MR. ESCOBEDO: YES, YOUR HONOR.

I'M REFERRING TO – IT'S ATTACHMENT NO. 6, LINES 20 THROUGH 25, BOTTOM PORTION OF THAT.

THE COURT: OKAY.

Q BY MR. ESCOBEDO: NOW, IN THE AFFIDAVIT – DO YOU HAVE A COPY OF THAT IN FRONT OF YOU, DETECTIVE WALL?

A YES, I DO.

Q REFERRING TO YOU LINE 23, IT SAYS, "THEY SAW TIRE TRACKS." NOW, THERE HAS BEEN SOME DISCREPANCY AS TO WHAT THEY SAW. BASED UPON YOUR INFORMATION THAT YOU RECEIVED FROM SIMPKINS AND [47] SPITULSKI, THEY TOLD YOU THAT THEY OBSERVED TIRE TRACKS, CORRECT?

A I BELIEVE THAT'S WHAT I REMEMBERED HEARING.

I DON'T REMEMBER SPECIFICALLY IT WAS TIRE MARKS OR TRACKS, BUT I BELIEVE THAT'S WHAT I HEARD.

Q AND WITH THAT INFORMATION, YOU PUT THAT DOWN IN YOUR AFFIDAVIT TO SUBMIT TO THE JUDGE, CORRECT?

A YES, SIR.

Q AND ACCORDING TO THE TWO DEPUTIES, THEY OBSERVED THESE TIRE TRACKS LEADING FROM WHERE THE VEHICLE WAS RECOVERED BACK TO THE GATE AT THE END OF THIS LONG DRIVEWAY, CORRECT?

A YES, SIR.

Q NOW, YOU WERE ABLE TO OBSERVE THIS DRIVEWAY, CORRECT?

THE DRIVEWAY IN QUESTION.

A YES.

Q YOU PERSONALLY OBSERVED IT?

A I DID NOT WALK IT BUT I SAW THE DRIVEWAY THAT WAS POINTED OUT TO ME.

Q OKAY.

SO YOU WERE STANDING OUT ON THIRD AVENUE LOOKING EASTBOUND ALONG THE DRIVEWAY, CORRECT?

A WELL, FROM THAT POINT, YOU COULD – YEAH, YOU – YOU COULD SEE SOME OF IT. I COULD [48] NOT SEE ALL OF IT, THOUGH.

Q OKAY.

PRETTY LONG DRIVEWAY, CORRECT?

A CAN YOU BE MORE SPECIFIC?

Q YEAH.

OVER 200 YARDS?

A I – I'D ESTIMATE THAT. THAT'S A FAIR ESTIMATE.

Q IT'S NOT THE SORT OF DRIVEWAY THAT'S PARKED – I MEAN THAT – THAT'S BUILT IN FRONT OF PEOPLE'S RESIDENCES AND WHERE THEY PARK THEIR CAR IN FRONT OF THE DRIVEWAY, CORRECT?

A I WOULD AGREE WITH THAT.

Q THIS IS MORE LIKE AN ACCESS ROAD? WOULD THAT BE A CORRECT DESCRIPTION OF THIS AREA?

A AN ACCESS ROAD? I – I – I'D HAVE TO CALL IT A DRIVEWAY.

Q OKAY.

A THAT'S BECAUSE I DON'T THINK IT GOES THROUGH. I THINK YOU – YOU GO DOWN AND YOU HAVE TO COME BACK OUT. YOU CAN'T REALLY – IT DOESN'T HAVE THROUGH TRAFFIC. I DON'T THINK

THERE WAS A – TO THE BEST OF MY RECOLLECTION, THERE IS NO ROAD SIGN OUT THAT SAYS THAT THIS IS, YOU KNOW, FIFTH STREET OR SOMETHING.

Q ALL RIGHT.

NOW, YOU – BASED UPON YOUR [49] OBSERVATIONS, THERE WERE NUMEROUS RESIDENCES ON EITHER SIDE OF THIS DRIVEWAY/ROADWAY, CORRECT?

A THERE WERE SEVERAL, YES.

Q AND DID YOU OBSERVE ANY VEHICLES ON THAT ROADWAY/DRIVEWAY AT THE TIME YOU MADE YOUR OBSERVATIONS?

A I DON'T REMEMBER. I BELIEVE THERE WAS ONE OR TWO PARKED.

Q OKAY.

NOW, IT'S YOUR TESTIMONY THAT YOU PERSONALLY NEVER WENT TO THE END OF THIS DRIVEWAY, CORRECT?

A AT WHAT POINT?

Q WHEN THE OFFICERS FIRST CALLED YOU OUT ON AUGUST 3RD.

A NO, I DID NOT.

Q OKAY.

DID YOU AT ANY TIME OBSERVE ANY TYPE OF FLUID TRAIL OR OIL, TRANSMISSION OIL LEADING FROM WHERE THE STOLEN VEHICLE WAS LOCATED

BACK ALONG THIS DRIVEWAY TO THE GATE, GATED AREA?

A I REALLY DID NOT INSPECT THAT.

I DID SEE FLUID ON THE VEHICLE ITSELF, BUT I DID NOT AT THAT POINT ATTEMPT TO TRACE IT BECAUSE I REALLY DID NOT KNOW THE STATUS OF THE VEHICLE.

Q OKAY.

NOW, YOU HAD INDICATED THAT THERE [50] WAS SOME ERRORS IN YOUR AFFIDAVIT, CORRECT?

A THERE IS A COUPLE, YES.

Q NOW, DID YOU HAVE AN OPPORTUNITY TO REVIEW THIS AFFIDAVIT BEFORE YOU SUBMITTED IT TO MAGISTRATE FALLS IN CITRUS COURT?

A YES.

Q AND AT THE TIME YOU SUBMITTED IT, EVERYTHING WAS TRUE AND CORRECT, IN YOUR OPINION?

A WELL, I COULD SAY RIGHT NOW I – OR IN THE MONTHS SINCE LAST SUMMER, I HAVE COME TO FIND OUT I DID MAKE A COUPLE MINOR ERRORS.

Q BUT MY QUESTION WAS –

A AT THE TIME – IF YOU LET ME FINISH.

AT THE TIME I SUBMITTED IT, I DID BELIEVE IT TO BE TRUE AND CORRECT AND WITH NO DELIBERATE MISSTATEMENTS.

Q AND WHAT WERE THOSE MISTAKES, DETECTIVE WALL?

A WELL, IF YOU REFER TO ATTACHMENT NO. 5, TOWARDS THE BOTTOM, I DESCRIBED THE PICKUP TRUCK BEING LOCATED ACROSS THE STREET OR ON THE STREET ACROSS FROM 214 THIRD STREET, AND IT WAS ACTUALLY NEXT TO 241 AND ACROSS FROM 234. I BELIEVE I TOOK THE ADDRESS ACROSS THE STREET WHICH IS PAINTED ON THE CURB AND IT WAS 234 AND I TRANSPOSED IT AND PUT 214.

AND ALSO I BELIEVE I MADE A [51] MISTAKE – I BELIEVE I MADE A MISTAKE ON ATTACHMENT NO. 6. LOOKS LIKE THE THIRD PARAGRAPH IS A LITTLE BIT OUT OF ORDER. THERE WAS SOME OBSERVATIONS MADE BY DEPUTY SIMPKINS AND SPITULSKI ON THE PROPERTY IN QUESTION ABOUT A BLACK TRUCK BEDLINER AND SOME – APPEARING TO BE FOR A FULL-SIZED PICKUP TRUCK. I BELIEVE THAT SHOULD HAVE COME LATER IN THE – IN THE AFFIDAVIT, PROBABLY ON – TOWARDS THE BOTTOM OF PAGE 7 WHERE THEY MADE SOME OTHER OBSERVATIONS, AN ORANGE COLORED TARP. AND IT WOULD BE PARAGRAPH 4. THAT'S WHERE THAT PARAGRAPH SHOULD BE PLACED. AND I HAD IT OUT OF ORDER.

Q OKAY.

ARE THERE ANY OTHER MISTAKES YOU NOW REALIZE WERE MADE AT THE TIME YOU SUBMITTED THESE DOCUMENTS UNDER AFFIDAVIT TO THE MAGISTRATE?

A YES.

ON PAGE OR ATTACHMENT 8, SECOND PARAGRAPH, I AGAIN TYPED IN THE WRONG ADDRESS OF 214 THIRD STREET. IT SHOULD BE A – ACROSS THE STREET FROM 214. IT SHOULD BE 241 OR ACROSS THE STREET FROM 234 THIRD STREET IN BASSET.

Q NOW, 241 IS ACTUALLY LOCATED SOUTH OF THIS DRIVEWAY, CORRECT, ENTRANCE TO THE DRIVEWAY?

A YES. ACROSS THE STREET AND A LITTLE BIT SOUTH, YES, SIR.

Q AND WHERE THE VEHICLE WAS PARKED, [52] THE DISTANCE BETWEEN WHERE THE VEHICLE WAS PARKED AND DRIVEWAY IS IN EXCESS OF 30 YARDS, CORRECT?

A I WOULD SAY IT'S RIGHT AROUND 30 YARDS. THAT'S FAIR.

Q WHEREAS, IF THE VEHICLE WAS FOUND AT 214, THAT WOULD BE DIRECTLY IN FRONT OF THE ENTRANCE TO THIS DRIVEWAY, CORRECT?

A ACTUALLY, I – I WENT BACK AND RECHECKED THAT STREET AND I COULD NOT FIND EVEN A 214 ON THAT STREET, SO I REALLY DON'T KNOW.

Q NOW, YOU WERE PART OF THE TEAM THAT EXECUTED THE SEARCH WARRANT, CORRECT?

A YES, SIR.

Q AND THERE HAS BEEN SOME VIDEO SHOWING YOU TALKING WITH THE DEFENDANT CUSKEY, CORRECT? AND YOU SPOKE WITH HIM ON THAT DATE?

A MR. CUSKEY, THAT'S CORRECT.

Q AND DO YOU RECALL OBSERVING A BIG BLUE ROLL OFF TYPE CARGO CONTAINER ON THE BACK OF THE PROPERTY ON THE DATE THE SEARCH WARRANT WAS EXECUTED?

A A CARGO CONTAINER?

Q WELL, A BLUE ROLL OFF.

A I'M NOT SURE WHAT IS A ROLL OFF.

Q BIG METAL CONTAINERS THAT YOU FILL UP WITH DEBRIS AND –

A I BELIEVE – I BELIEVE I REMEMBER SEEING SOMETHING LIKE THAT. I DON'T REMEMBER EXACTLY WHERE IT WAS. BUT I THINK IT WAS – WELL, I DON'T [53] REMEMBER EXACTLY.

Q DID YOU ALSO OBSERVE IN THAT AREA DOZENS AND DOZENS OF WHEELS AND TIRES STACKED ON A RACK?

A I'M NOT SURE EXACTLY WHICH AREA THAT IS, BUT I KNOW THERE WAS A LOT OF WHEELS AND TIRES ON THE PROPERTY, A LOT OF – A LOT OF – A LITTLE BIT OF EVERYTHING, REALLY.

Q RIGHT.

I MEAN YOU COULD DESCRIBE THAT AS A JUNK YARD, CORRECT?

A WELL, I DON'T WANT TO DEMEAN THIS PERSON'S PROPERTY. IT'S – EVERY MAN, IT'S HIS CASTLE. TO ME, IT MIGHT BE A JUNK YARD. TO HIM, IT'S HIS HOME. SO I WOULD NOT SAY THAT.

Q THERE WERE CAR PARTS ON THAT PROPERTY, THERE WERE BIRDS, THERE WERE ANIMALS, THERE WERE REFRIGERATORS, CORRECT?

A YES.

Q ALL KINDS OF THINGS?

A ALL KINDS OF STUFF.

Q IF YOU WANTED SOMETHING, YOU COULD GO BACK THERE – I MEAN ANYTHING – AND THERE IS A LIKLIHOOD YOU COULD FIND IT IN THAT PILE, CORRECT?

MS. NAJERA: I'M GOING TO OBJECT AS VAGUE.

THE COURT: SUSTAINED.

Q BY MR. ESCOBEDO: AND THERE WAS AN [54] ALLIGATOR ON THE PROPERTY, CORRECT?

A I'M NOT AN ALLIGATOR EXPERT BUT IT LOOKED LIKE AN ALLIGATOR TO ME. AND I WOULDN'T ARGUE ABOUT IT, I WOULD SAY THAT.

MR. ESCOBEDO: NOTHING FURTHER, YOUR HONOR.

THE COURT: ANY QUESTIONS?

CROSS-EXAMINATION

BY MS. NAJERA:

Q JUST WITH REGARD TO AFTER YOU RECEIVED THE INFORMATION THAT YOU DID THAT IS IN THE WARRANT FROM OFFICER – DEPUTY SIMPKINS AND SPITULSKI, DID YOU DO SOME FOLLOWUP INVESTIGATION AS WELL?

A YES, I DID QUITE A BIT.

Q AND DID YOU TALK TO THE PEOPLE WHO ORIGINALLY OWNED THE TRUCK?

A YES, I DID.

Q AND DID THEY IDENTIFY A BEDLINER THAT, IN FACT, MATCHED THE DESCRIPTION OF THE BEDLINER THAT YOU HAD BEEN PREVIOUSLY TOLD ABOUT BY SIMPKINS AND SPITULSKI?

A ACTUALLY, THEY DID NOT IDENTIFY. THIS PERSON DESCRIBED TO ME.

Q I'M SORRY?

A AFTER I DETERMINED WHO THE TRUCK BELONGED TO, I CONTACTED THESE PEOPLE. I'LL HAVE TO [55] LOOK AT MY AFFIDAVIT JUST BRIEFLY TO GET THIS GENTLEMAN'S NAME. IT WAS A MR. BRUCE WITKIN (PHONETIC), WHO OWNED A BUSINESS, I BELIEVE IT WAS A BODY SHOP DOWN IN ANAHEIM. AND HE DESCRIBED TO ME – WELL, I WANTED TO FIND OUT THE CONDITION – THE CONDITION THIS TRUCK WAS IN WHEN HE SAW IT LAST. AND HE DESCRIBED TO ME, AMONG OTHER THINGS, THAT IT HAD A FULL-SIZED BLACK

BEDLINER ON THE TRUCK WHEN IT WAS REPORTED STOLEN.

Q AND HAD DEPUTY SIMPKINS AND SPITULSKI DESCRIBED TO YOU BEFORE YOU HAD THIS INFORMATION THAT THEY HAD SEEN A BLACK FULL-SIZED BEDLINER?

A YES, THEY DID.

Q AND DO YOU RECALL WHETHER OR NOT OR WHEN THE – THE DOG WAS BROUGHT ONTO THE LOCATION?

A THE NARCOTICS DOG?

Q YEAH.

A IT WOULD HAVE BEEN PROBABLY SOME HOUR AND A HALF TO TWO HOURS AFTER WE INITIALLY SERVED THE WARRANT.

Q AND WHY WAS THE DOG CALLED FOR?

A BECAUSE ONE OF THE DEPUTIES ON THE – ON THE SEARCH TEAM, I BELIEVE IT WAS SIMPKINS, RECOVERED WHAT I WOULD CONSIDER A FAIRLY SUBSTANTIAL AMOUNT OF NARCOTICS.

MS. NAJERA: THANK YOU.

I HAVE NOTHING FURTHER.

[56] THE COURT: ANYTHING FURTHER?

MR. POPE: YES, PLEASE, YOUR HONOR.

CROSS-EXAMINATION

BY MR. POPE:

Q SIR, YOU SAW THE –

THE COURT: SHOULD WE TAKE THIS UP AT 1:30, COUNSEL?

MR. POPE: SURE.

THE COURT: ALL RIGHT.

1:30, PLEASE.

MS. NAJERA: YOUR HONOR, CAN I – MAY I ASK?

THE DEFENSE HAD SUBPOENAED BOTH DEPUTY SIMPKINS AND SPITULSKI, SO THEY ARE BASICALLY ON THE CLOCK RIGHT NOW. ONE OF THEM HAS GOT A DAY OFF AND I WONDER IF THEY ARE NOT GOING TO CALL DEPUTY SIMPKINS, IF WE COULD JUST SEND HIM BACK THAN STAY AROUND ALL DAY.

THE COURT: ALL RIGHT.

MR. POPE: COULD WE JUST HAVE A MOMENT, YOUR HONOR?

(BOTH DEFENSE COUNSEL CONFER WITH DEFENDANT CUSKEY SOTTO VOCE.)

MR. ESCOBEDO: YOUR HONOR, WE BELIEVE AT [57] THIS TIME THAT HIS TESTIMONY WILL BE REQUIRED IN THE AFTERNOON. .

THE COURT: WHAT IS THE OFFER OF PROOF?

MR. ESCOBEDO: REGARDING THE TIRE GOUGES, TIRE TRACKS, WHAT HIS OBSERVATIONS WERE.

THE COURT: YOU CHARACTERIZE TIRE GOUGES. THERE HAS BEEN NO TESTIMONY OF GOUGES. YOU USED THAT IN YOUR QUESTIONS, BUT THERE HAS BEEN NO TESTIMONY FROM ANY WITNESS TO SAY THAT THERE WERE GOUGES ANYWHERE. THERE IS ONE WITNESS WHO TESTIFIED THAT THERE WAS A – WHAT HE CHARATERIZED AS A MARK WHICH MAY HAVE BEEN MADE BY A RIM FROM A LOW TIRE, BUT THERE IS NOTHING OTHER THAN THAT BEFORE THE COURT.

ALL RIGHT. LET'S BRING THE DEPUTY IN NOW AND GET THAT TESTIMONY.

MS. NAJERA: THANK YOU, YOUR HONOR

THE COURT: YOU MAY STEP DOWN.

THE WITNESS: THANK YOU, SIR.

(THE COURT HEARD AN UNRELATED CALENDAR MATTER.)

MURRAY SIMPKINS,

CALLED AS A WITNESS BY THE DEFENDANT, WAS SWORN AND TESTIFIED AS FOLLOWS:

THE CLERK: WOULD YOU RAISE YOUR RIGHT HAND TO BE SWORN, PLEASE.

[58] YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE

TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

THE WITNESS: I DO.

THE CLERK: PLEASE STEP FORWARD AND BE SEATED.

(PAUSE.)

THE CLERK: STATE AND SPELL YOUR FULL NAME FOR THE RECORD, PLEASE.

THE WITNESS: DEPUTY MURRAY SIMPKINS, S-I-M-P-K-I-N-S.

THE CLERK: THANK YOU.

THE COURT: YOU MAY PROCEED.

MR. ESCOBEDO: YES.

DIRECT EXAMINATION

BY MR. ESCOBEDO:

Q DEPUTY SIMPKINS, HOW LONG HAVE YOU BEEN A PEACE OFFICER?

A ELEVEN YEARS.

Q ON AUGUST 3RD, 1999, AT APPROXIMATELY 8:30 A.M., WERE YOU WORKING AS A POLICE OFFICER?

A YES, I WAS.

[59] Q AND WERE YOU IN THE LOCATION OF 241 THIRD STREET IN THE AREA OF BASSET, COUNTY OF LOS ANGELES?

A YES.

Q OKAY.

AND DID YOU OBSERVE A STOLEN VEHICLE PARKED ON THE WEST SIDE OF THE STREET AT APPROXIMATELY 241 THIRD STREET?

A WELL, LATER, YES.

Q OKAY.

AND DID YOU OBSERVE ANY TYPE OF MARKS LEADING FROM THE STOLEN OR FROM THE VEHICLE IN ANY DIRECTION?

A YES.

Q AND WHAT TYPE OF MARKS DID YOU OBSERVE?

A WELL, THERE WAS AN INDENTATION IN THE ASPHALT ROADWAY THAT WENT FROM THE FRONT LEFT TIRE BACK TO THE DRIVEWAY.

Q INDENTATION, MEANING A MARK ON THE ASPHALT?

A YES.

Q OKAY.

AND – AND DID YOU OBSERVE THE FRONT LEFT TIRE – DID YOU OBSERVE THE FRONT LEFT TIRE?

A YES.

Q OKAY.

[60] WAS IT IN A FULL INFLATED CONDITION?

A IT WAS FLAT.

Q OKAY.

AND DID YOU INDICATE THAT ANYWHERE IN YOUR POLICE REPORT, DEPUTY SIMPKINS?

A I'M NOT SURE.

I HAVEN'T READ MY – I HAVEN'T REVIEWED ANYTHING EXCEPT FOR THE WARRANT ON THIS ONE.

Q DID YOU CONVEY THAT INFORMATION TO DEPUTY – EXCUSE ME – DETECTIVE WALL?

A YES.

Q OKAY.

AND IT'S YOUR – YOUR TESTIMONY THAT YOU TOLD HIM THAT YOU OBSERVED THE FRONT LEFT TIRE TO BE IN A DEFLATED STATE?

A YES. HE SAW IT.

Q OKAY.

AND YOU ARE SAYING THAT THIS DEFLATED TIRE, THE BEST OF YOUR KNOWLEDGE, CAUSED THE INDENTATION ON THE ASPHALT?

A THE RIM DID.

Q OKAY.

DID YOU OBSERVE THE RIM PROTRUDING FROM THE TIRE?

A YES.

Q OKAY.

SO THE WAY I PICTURE IT, THIS CAR [61] IS LEANING TOWARDS THE FRONT LEFT?

A IT CAN'T LEAN. THERE WAS NOTHING IN IT TO MAKE IT LEAN. IT'S GOT A FRONT FLAT LEFT TIRE.

Q OKAY.

SO IT WAS A LITTLE LOWER ON THAT SIDE?

A I'M NOT SURE IF IT WAS LOWER OR HIGHER. IT WAS TO THE RIGHT CURB.

Q DID YOU – WHEN OFFICER – YOU ASKED DETECTIVE WALL TO RESPOND TO THE LOCATION, CORRECT?

A HIM AND SERGEANT JACKSON, DAN JACKSON.

Q AND DID YOU SHOW HIM THE TIRE OR INDENTATION MARKS ON THE ASPHALT?

A I SHOWED HIM THE TRUCK. WHETHER OR NOT HE LOOKED AT IT HIMSELF, I'M NOT SURE. I WENT DOWN THE DRIVEWAY AT THAT POINT.

Q SO THE – THE – THE DESCRIPTION THAT DEPUTY WALL PUT IN HIS AFFIDAVIT THAT YOU OBSERVED TIRE TRACKS IS INCORRECT?

A NO, IT'S NOT.

Q WELL, YOUR TESTIMONY IS THAT YOU SAW INDENTATIONS?

A IN THE ROADWAY.

Q IN THE ROADWAY?

A THE TIRE.

[62] Q MADE BY THE RIM, CORRECT?

A CORRECT.

Q NOT BY THE TIRE?

A CORRECT.

Q AND WHAT IS YOUR ESTIMATE OF THE DISTANCE BETWEEN WHERE THE STOLEN VEHICLE WAS RECOVERED AND THE ENTRANCE TO THE DRIVEWAY/ROADWAY?

A TWENTY, 30 YARDS.

Q OKAY.

AND YOU WERE ABLE TO FOLLOW THAT INDENTATION THEN THAT ENTIRE LENGTH?

A YES. VERY PLAIN.

Q DID YOU, BY ANY CHANCE, TAKE ANY PHOTOGRAPHS OF THAT INDENTATION?

A NO.

WE REQUESTED DETECTIVE WALL AND SERGEANT JACKSON TO COME OUT. HE WAS THE FIELD SUPERVISOR.

Q THERE IS A STATEMENT HERE, "THEY SAW TIRE TRACKS LEADING BACK TO THE FENCE AT THE END OF A LONG DRIVEWAY THAT RAN EASTBOUND FROM THE EAST SIDE OF THIRD STREET." THAT'S INCORRECT?

A NO, THAT STATEMENT IS VERY CORRECT.

Q YOU SAW TIRE TRACKS?

A THAT PORTION, YES, SIR.

Q OKAY.

NOW, ISN'T IT TRUE THAT YOU WERE [63] ASKED TO MODIFY WHAT WAS PUT IN THIS AFFIDAVIT PERTAINING TO SOME INFORMATION? YOU WERE ASKED TO UPDATE THE INFORMATION THAT WAS IN THE AFFIDAVIT?

A NO.

Q OR CHANGE THE INFORMATION?

A NOT TO MY KNOWLEDGE. I – REFERRING TO WHAT SPECIFICALLY?

Q TIRE TRACKS.

A NO.

Q NOW, YOU WERE ABLE TO FOLLOW THESE TIRE TRACKS ALL THE WAY TO THE END OF THIS DRIVEWAY, CORRECT?

A AT SOME POINT IN TIME, WERE GOING TO HAVE TO DIFFERENTIATE BETWEEN – SO THAT I UNDERSTAND WHERE YOU ARE COMING FROM – DIFFERENTIATE BETWEEN MARKING IN THE ASPHALT ROADWAY AND THE TIRE PRINT ON THE DIRT.

Q OKAY.

WERE YOU ABLE TO OBSERVE THE MARKING ON THE ASPHALT FROM WHERE THE VEHICLE WAS

LOCATED ALL THE WAY BACK TO THE END OF THE FENCE?

A NO, BECAUSE THE ASPHALT ENDED ON THE DRIVEWAY.

Q WERE YOU ABLE TO OBSERVE THIS INDEN-TATION ON THE DIRT ON THE DRIVEWAY?

A YES, THE INDENTATION. BUT THE TIRE PATTERN, THE TIRE WAS FLAT, SO IT LEFT A DISTINCTIVE MARK ALL THE WAY BACK TO THE GATE. THAT WAS POINTED [64] OUT TO SERGEANT DAN JACKSON, I KNOW FOR SURE.

Q EXCUSE ME.

DAN JACKSON?

A YEAH. HE WAS THE FIELD SUPERVISOR THAT DAY.

Q OKAY.

NOW, YOU WALKED TO THE END OF THIS DRIVEWAY AND LOOKED INTO THE GATED AREA, CORRECT?

A YES, SIR.

Q NOW, IN ADDDITION TO ALLEGEDLY SEEING FOUR – THREE WHEELS, WHITE SPOKED WHEELS, YOU ALSO SAW DOZENS AND DOZENS OF OTHER TIRES LOCATED IN THE BACK THERE?

A I WOULDN'T SAY THAT, NO.

Q WOULD YOU SAY THAT YOU SAW MORE THAN 15 WHEELS AND TIRES BACK THERE?

A SIMILAR TO THE ONES ON THE TRUCK OR IN ADDITION TO?

Q RIGHT.

WELL, IN THAT AREA, THAT GENERAL AREA. WHEN YOU LOOKED OVER THE FENCE, YOU SAID YOU SAW THOSE FOUR WHEELS – THREE WHEELS.

EXCUSE ME.

A CORRECT.

Q IN ADDITION TO THAT, YOU SAW MANY, MANY AUTO – PIECES OF AUTOMOBILE, CORRECT?

A NO.

Q WHAT DID YOU SEE?

[65] A WELL, WHEN I LOOKED THROUGH THE FENCE, THE TIRES WERE TO THE LEFT. THEY WERE STACKED, SMALL STACK. TO THE RIGHT OF THAT WAS A PALLET WITH AN ORANGE TARP. BEHIND THE PALLET WITH THE TARP WAS SOME TIRES.

Q MORE TIRES?

A CORRECT.

Q OTHER THAN THE SPOKED ONES?

A YES.

Q WHAT DO YOU MEAN BY THAT? TEN, 15?

A I WOULD SAY MORE THAN FIVE.

Q LESS THAN 20?

A YEAH.

Q LESS THAN A HUNDRED?

A YES.

Q MORE THAN 20?

A NO, NOT IN MY MIND, AS I RECALL.

Q NOW, IT WAS INDICATED THAT YOU RECOVERED A TRUCK BEDLINER, CORRECT?

A DETECTIVE WALL DID, YES.

Q AND WAS IT EVER FOUND OUT THAT THAT BEDLINER BELONGED TO THE OWNER OF THE STOLEN VEHICLE?

MS. NAJERA: OBJECTION, CALLS FOR SPECULATION FROM THIS WITNESS.

THE COURT: NOT RELEVANT. SUSTAINED.

Q BY MR. ESCOBEDO: DID YOU EVER CHARGE MR. CUSKEY OR LONGORIA WITH POSSESSION OF [66] STOLEN AUTO PARTS?

MS. NAJERA: OBJECTION, IRRELEVANT.

THE COURT: SUSTAINED.

THE WITNESS: I BELIEVE IT WAS SUSTAINED.

MR. ESCOBEDO: NOTHING FURTHER.

THE COURT: ANY FURTHER QUESTIONS OF THIS WITNESS?

MR. POPE: YES, PLEASE, YOUR HONOR.

THE COURT: ALL RIGHT.

CROSS-EXAMINATION

BY MR. POPE:

Q SIR, IF YOU WERE TO TAKE THE ASPHALT ROAD THAT RUNS FROM WHAT WE HAVE BEEN CALLING A DRIVEWAY THAT LEADS TO THE CUSKEY PROPERTY TO THE POINT WHERE THE VEHICLE WAS STOPPED WHEN YOU FIRST OBSERVED IT, AND WE'RE TALKING ABOUT THE STRETCH OF ROAD BETWEEN THE DRIVEWAY AND WHERE THE CAR WAS –

A THIRD AVENUE.

Q THIRD AVENUE. ALL RIGHT.

IS IT YOUR TESTIMONY UNDER OATH, SIR, THERE WAS A SINGLE GOUGE LEADING FROM THE POINT OF – WHERE THE LEFT FRONT WHEEL OF THE TRUCK WAS BACK TO WHERE THE DRIVEWAY WAS?

MS. NAJERA: I'M GOING TO OBJECT. THAT MISSTATES THE TESTIMONY.

[67] THE COURT: SUSTAINED.

Q BY MR. POPE: SIR, WOULD YOU PLEASE CHARACTERIZE WHAT YOU DESCRIBE AS INDENTATION IN THE ASPHALT.

A IF I WERE TO – IF I WERE TO TAKE, SAY, THE EDGE OF A KNIFE AND RUN IT ACROSS THAT TABLE, IT WOULD SCRATCH. IT'S VERY MINOR. THAT

SCRATCH MAY DISAPPEAR IN A DAY, TWO DAYS, WHATEVER. WHATEVER, SOMEONE WASHES IT.

Q RIGHT.

A THE ASPHALT ROAD HAD THE SAME TYPE OF SCRATCH FROM THE RIM IN IT THAT LEAD DIRECTLY –

Q DID YOU ACTUALLY GET DOWN ON THE GROUND AND LOOK AT IT?

A YES, SIR.

Q HOW DEEP WAS IT, SIR?

A NO MORE THAN AN EIGHTH OF AN INCH.

Q AND HOW WIDE WAS IT AT THE TOP, THAT IS, THE TOP OF THE ROAD SURFACE?

A MAYBE IN SOME POINTS THE WIDTH OF A PEN.

Q ALL RIGHT.

WHEN YOU SAY THE WIDTH OF A PEN, ARE YOU TALKING ABOUT THE WIDTH OF THE POINT?

A NO, THE FAT PORTION.

Q APPROXIMATELY A QUARTER AN INCH, PERHAPS LONGER?

A YES.

[68] Q AND YOU WERE ABLE TO SEE A SINGLE LINE WHERE THIS INDENTATION, SCRATCH WAS IN THE ASPHALT, CORRECT?

A ALL THE WAY BACK TO THE DRIVEWAY.

Q AND YOU TOOK DETECTIVE WALL AND YOU SHOWED HIM THAT?

A YES, SIR.

Q IS THAT RIGHT?

MR. POPE: THANK YOU.

I HAVE NOTHING FUTHER.

THE COURT: ANYTHING FURTHER?

MS. NAJERA: NOTHING FURTHER.

MR. POPE: YOUR HONOR, MAY I REQUEST THE WITNESS BE INSTRUCTED NOT TO DISCUSS HIS TESTIMONY WITH DETECTIVE WALL OR THE OTHER OFFICER?

THE COURT: ALL RIGHT. THAT IS THE ORDER.

THE WITNESS: YES, YOUR HONOR.

THE COURT: ALL RIGHT.

THIS WITNESS IS EXCUSED.

TWO O'CLOCK, PLEASE.

THE WITNESS: THANK YOU, YOUR HONOR, COUNSEL.

(AT 12:18P.M., A RECESS WAS TAKEN UNTIL 2:00 P.M. OF THE SAME DAY.)

[69] POMONA, CALIFORNIA, MONDAY, MARCH 20, 2000

2:00 P.M.

DEPARTMENT NO. EA "E"
HON. DAVID S. MILTON, JUDGE
– 000 –

APPEARANCES:

(APPEARANCES AS HERETOFORE NOTED.)

(SHARON BAKER FOX, CSR NO. 4332, OFFICIAL REPORTER.)

THE COURT: SERGEANT, YOU MAY RETAKE THE STAND.

WE'RE BACK ON THE RECORD IN THE MATTER OF CUSKEY AND LONGORIA.

THE RECORD SHALL REFLECT THAT EACH DEFENDANT IS PRESENT IN COURT WITH COUNSEL.

THE PEOPLE REPRESENTED.

SERGEANT, YOU ARE STILL UNDER OATH.

THE WITNESS: YES, SIR.

KEITH WALL,

HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

THE COURT: YOU MAY RESUME YOUR EXAMINATION.

MR. ESCOBEDO: THAT WOULD BE ME, YOUR HONOR?

THE COURT: YES.

[70] MR. ESCOBEDO: OKAY.

REDIRECT EXAMINATION BY MR. ESCOBEDO:

Q DETECTIVE WALLS, I'M GOING TO ASK YOU TO REFER TO PAGE --

THE COURT: THAT'S WALL, ISN'T IT? NO –

THE WITNESS: NO "S".

MR. ESCOBEDO: THANK YOU.

Q PAGE 8 OF YOUR AFFIDAVIT, SPECIFICALLY, LINE 13, ARE YOU THERE?

A PARDON ME?

Q ARE YOU THERE?

A PAGE 8, YES, SIR.

Q LINE 13.

NOW, YOU INDICATED IN YOUR AFFIDAVIT THAT DEPUTY SIMPKINS AND SPITULSKI PERSONALLY ADVISED YOU – ME – OF THEIR OBSERVATIONS.

OKAY.

THAT'S CORRECT?

A YES, SIR.

Q OKAY.

SO THEY TOLD YOU EVERYTHING THAT THEY FELT WAS IMPORTANT ABOUT THE SCENE, CORRECT?

MS. NAJERA: OBJECTION, CALLS FOR SPECULATION FROM THIS WITNESS.

[71] THE COURT: SUSTAINED.

Q BY MR. ESCOBEDO: AT ANY TIME, DID OFFICERS – DEPUTY SIMPKINS ADVISE YOU OF TIRE INDENTATIONS ON THE ASPHALT?

MS. NAJERA: I'M GOING TO OBJECT. VAGUE AS TO ASPHALT ON THE DRIVEWAY OR ASPHALT ON THE STREET.

Q BY MR. ESCOBEDO: DID – AT ANY TIME, DID DEPUTY SIMPKINS POINT OUT TO YOU, TELL YOU ABOUT INDENTATIONS ON THE STREET?

BEING THIRD STREET.

A I – I REMEMBER JUST TRACKS OR MARKS. I DON'T REMEMBER THE WORD, INDENTATIONS, SPECIFICALLY.

Q SO ACCORDING TO YOUR TESTIMONY THEN, IN YOUR MEMORY, YOU ONLY OBSERVED TIRE TRACKS?

A ACTUALLY, DEPUTY SIMPKINS AND SPITULSKI RELAYED ME THEIR OBSERVATIONS. I DID NOT WALK THE DRIVEWAY TO LOOK FOR THE SAME MARKS.

Q OKAY.

NOW, IN YOUR AFFIDAVIT, YOU INDICATED – AND THE WORDING HERE IS VERY IMPORTANT. YOU – ON – REFERRING TO PAGE 6, LINE 2 – EXCUSE ME.

PAGE 5 – I'M SORRY. PAGE 5, LINES 22 AND 23.

YOU INDICATED THAT THE DEPUTIES DISCOVERED A WHITE PICKUP TRUCK PARKED ON THE STREET [72] ACROSS FROM 214. NOW, YOU HAVE TESTIFIED THAT 214 WAS INCORRECT, CORRECT?

A YES.

Q THAT YOU MEANT TO SAY 241?

A NO, THAT'S NOT WHAT I TESTIFIED TO.

ACTUALLY. I SAID THE TRUCK WAS PARKED IN FRONT OF 241 BUT I READ THE ADDRESS OFF SOME NUMBERS PAINTED ON THE OPPOSITE SIDE OF THE STREET THAT SAID 241 (SIC). AND I BELIEVE I TRANSPOSED IT AND PUT 214. I DON'T REMEMBER. I DIDN'T REMEMBER AT THAT POINT SEEING 241 WHERE THE TRUCK WAS PARKED. BUT I REMEMBER I LOOKED – I VIVIDLY REMEMBER LOOKING ACROSS THE STREET AND I SAW SOME NUMBERS PAINTED ON THE CURB. AND I THOUGHT I WROTE THEM DOWN CORRECTLY, BUT AFTER RECHECKING THE AREA, I BELIEVE I TRANSPOSED 234 –

Q 41.

A – TO 214.

Q OKAY.

A I BELIEVE I CHANGED THE 3 TO A 1, AND I SAID – THOUGH THE TRUCK IS, INDEED, PARKED – THE ADDRESS WOULD BE CLOSER TO 241, BUT I TOOK THE NUMBERS FROM ACROSS THE STREET.

Q SO THE STREET WAS – THE VEHICLE WAS NEAR 241 ON THE WEST SIDE OF THE STREET?

A FACING SOUTH, YES, SIR.

Q SO IF YOU HAD – YOU ARE SAYING [73][1] YOU GOT THEM MIXED UP. BUT THE PARK – THE TRUCK WAS NOT PARKED ACROSS THE STREET FROM 241, CORRECT?

A NO. I SAID IT WAS PARKED ACROSS THE STREET FROM WHAT I THOUGHT WAS 2 – WELL, I, APPARENTLY, TRANSPOSED THE 3 INTO A 1. I SAW 234, WHICH IS ON THE EAST SIDE, AND IT WAS PARKED ACROSS FROM THAT, WHICH I COME TO LATER FIND OUT IS ACTUALLY 241 OR CLOSE TO IT.

Q I UNDERSTAND THAT.

A IF THAT MAKES SENSE.

Q YOU LOOKED ACROSS FROM THE WEST SIDE TO THE EAST SIDE, SAW 234?

A YES, SIR.

Q NOW, HAVE YOU HAD AN OPPORTUNITY TO GO BACK OUT TO THAT SCENE?

A YES.

Q AND WHEN YOU OBSERVED WHATEVER YOU DID, DID YOU SEE ANY TIRE – OR EXCUSE ME – INDENTATIONS MADE ON THE PAVEMENT ON THIRD STREET?

MS. NAJERA: I'M GOING TO OBJECT, IR-RELEVANT, IF IT WAS AT A LATER TIME.

THE COURT: SUSTAINED.

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[1] Page 73 was inadvertently omitted from the original record.

MR. ESCOBEDO: THERE IS TESTIMONY – NOTHING FURTHER, YOUR HONOR.

MR. POPE: A COUPLE QUESTIONS, PLEASE, YOUR HONOR, PLEASE.

[74] RECROSS-EXAMINATION

BY MR. POPE:

Q SIR, WHEN YOU GOT THE CALL TO GO TO THE SCENE, YOU MET SIMPKINS AND SPITULSKI THERE, IS THAT CORRECT?

A YES, SIR.

Q AND WAS THE FIRST THING THAT YOU SAW WHEN YOU ARRIVED THE WHITE PICKUP TRUCK?

A YES, SIR.

Q AND WHAT WAS THE CONDITION OF THE – THE WHEELS, THE TIRES?

A I BELIEVE THERE WAS TWO OR THREE SPACE SAVERS – LET ME REFER TO MY AFFIDAVIT JUST TO REFRESH MY MEMORY, IF I CAN, FOR A MINUTE.

THERE WAS TWO SPACE SAVER TYPE SPARES AND A – ONE WHITE SPOKED WHEEL WITH A SONIC (PHONETIC) BRAND TIRE AND A FIRESTONE BRAND TIRE ON THE RIGHT REAR.

Q WHAT WERE THE TWO FRONT TIRES, IF YOU RECALL?

A I BELIEVE THERE WAS ONE SPACE SAVER AND ONE WHITE SPOKE.

Q ALL RIGHT.

AND WHAT WAS THE – THE CONDITION OF EACH OF THOSE TIRES?

A I SEEM TO RECALL THAT THE SPACE SAVER WAS VERY LOW OR FLAT. AND I DON'T – THE – ONE OF THEM WAS LOW OR FLAT. I DON'T REMEMBER WHICH [75] ONE.

I THINK IT WAS THE SPACE SAVER, BUT I DON'T REALLY REMEMBER.

Q THERE WAS DEFINITELY AIR IN BOTH TIRES, IS THAT A FAIR STATEMENT?

A I JUST REMEMBER ONE OF THEM – ONE – I THINK IT WAS JUST ONE OF THEM WAS VERY LOW OR FLA[T], BUT I DON'T REMEMBER HOW MUCH, HOW FLAT IT WAS.

Q DID THE TIRE, THE FLAT ONE, THE LOW ONE, HOWEVER YOU DESCRIBE IT, WAS THAT TIRE CUT THROUGH BY THE RIM?

A I REALLY DON'T REMEMBER.

Q DID – DID – DID EITHER OF THE OTHER TWO OFFICERS TELL YOU THAT THE – THE – THE – THE TIRE WAS CUT THROUGH WITH THE RIM?

A I DON'T REMEMBER THAT, NO.

Q DID – DID EITHER OFFICER POINT TO SOMETHING ON THE GROUND AS THEIR INDICATION TO YOU THAT, THAT WAS THE MANNER BY WHICH THEY TRACED THE SOURCE OF THIS VEHICLE?

A I BELIEVE IT WAS DESCRIBED TO ME, BUT I DON'T – I DON'T RECALL POINTING IT OUT AT THAT POINT.

Q ALL RIGHT.

IF YOU HAD BEEN SHOWN SOME EVIDENCE THAT THERE HAD BEEN A VEHICLE MOVED ALONG THE STREET, YOU WOULD HAVE NOTED THAT, WOULD YOU NOT?

[76] A MOST LIKELY.

WELL, LET ME BACK UP.

IF I WAS – IF I HAD RETRACED IT MYSELF, I PROBABLY WOULD HAVE NOTED IT. I RELIED ON THE DEPUTIES' DESCRIPTION TO ME FOR VARIOUS OTHER REASONS.

Q SO I TAKE IT THEN THAT YOU WERE NOT SHOWN A RETRACING OF THIS ALLEGED TRACK, GOUGE, SCRAPE IN THE ROAD, CORRECT?

MS. NAJERA: I'M GOING TO OBJECT, VAGUE AS TO WHERE. ON THE DRIVEWAY OR ON THE STREET?

MR. POPE: I'LL WITHDRAW AND REPHRASE THE QUESTION.

THE COURT: ALL RIGHT.

Q BY MR. POPE: AT ANYTIME YOU WERE OUT THERE, DID ANYBODY POINT TO YOU ANY MARKS THAT THAT THEY CLAIMED TO BE MADE BY THE VEHICLE THAT WAS TAKEN IN FRONT OF CUSKEY'S HOUSE OR CUSKEY'S – TAKEN TO THE PLACE

WHERE IT WAS ULTIMATELY LOCATED BY THE POLICE?

A WELL, IT WASN'T SO MUCH AS POINTED OUT TO ME, RATHER THAN DESCRIBED TO ME. AND MY FOCUS AT THAT POINT BECAME MORE ON THE TRUCK AND CONDITION OF THE TRUCK AT THAT POINT.

Q IF WE CAN BACK UP FOR A MINUTE?

A SURE.

Q DID YOU AT ANY TIME LOOK ON THE GROUND AND SEE ANY KIND OF MARKINGS WHICH YOU [77] ASSOCIATED WITH MOVEMENT OF THE VEHICLE?

A I DID NOT SPECIFICALLY CHECK MYSELF, NO.

Q ALL RIGHT.

DID EITHER OF THE OFFICERS DIRECT YOUR ATTENTION TO MARKINGS ON THE GROUND WHICH THEY FELT WERE ASSOCIATED WITH MOVEMENT OF THE VEHICLE?

A I REMEMBER THEM INDICATING THAT THERE WERE MARKINGS OVER ON THE DRIVEWAY. I DON'T REMEMBER HAVING A CONVERSATION NECESSARILY ABOUT THE ACTUAL ASPHALT STREET OUT – AWAY FROM THE DRIVEWAY.

BUT I DO SPECIFICALLY REMEMBER TELLING THEM THAT AT THAT POINT I WAS NOT GOING TO WALK DOWN THE DRIVEWAY MYSELF AND BRING MORE ATTENTION TO THE LOCATION BECAUSE I

FELT AT THAT POINT OFFICER SAFETY AND POSSIBLE – THE POSSIBILITY OF RETREIVING ANY STOLEN PROPERTY AT A LATER TIME MIGHT BE JEOPARDIZED BY BRINGING MORE ATTENTION TO THAT DRIVEWAY AND TO CLOSELY EXAMINING MARKS ON THAT DRIVEWAY.

Q SO I TAKE IT, THOUGH, YOU DID NOT SEE ANY MARKINGS ON THIRD STREET?

A NO, I WAS NOT SPECIFICALLY LOOKING FOR THEM. BUT I DID NOT – I DID NOT RETRACE THE STEPS, NO.

Q AND NOBODY POINTED OUT MARKINGS ON THIRD STREET TO YOU, DID THEY?

A I DON'T RECALL THAT, NO. I [78] REMEMBER MARKINGS BEING POINTED OUT TO OR BEING DESCRIBED OVER ON THE DRIVEWAY SPECIFICALLY.

Q DID YOU GO AND LOOK AT MARKINGS ON THE DRIVE – ON THE ASPHALT DRIVEWAY – OR, EXCUSE ME – ON THE DRIVEWAY WHICH WE'RE NOT GIVING A NAME THAT'S COMING OFF THIRD STREET?

A RIGHT.

Q DID YOU SEE MARKINGS ON –

A ACTUALLY, AT THAT POINT, I DID NOT GO OVER TO EXAMINE THEM BECAUSE I DID NOT WANT TO DRAW MORE ATTENTION TO THE INVESTIGATION.

Q THE – YOU DID OBSERVE A – AN AREA ON THE GROUND WHICH YOU THOUGHT HAD BEEN RAKED AND WATERED DOWN, CORRECT?

A THAT'S NOT CORRECT. ACTUALLY, AT THIS POINT, DEPUTY SIMPKINS AND SPITULSKI MADE THAT OBSERVATION. THEY INFORMED ME OF THEIR OBSERVATIONS.

Q AND THE IMPLICATION WAS THAT SOMETHING HAD BEEN BURIED THERE, IS THAT CORRECT?

A NOT NECESSARILY. YOU COULD DRAW ONE OF SEVERAL IMPLICATIONS. THAT COULD BE ONE OF THEM. ALSO, IT COULD BE USED TO COVER UP POSSIBLY TIRE OR RIM MARKS. IT COULD BE USED TO RAKE OVER POSSIBLY AN OIL TRAIL COMING FROM THE PROPERTY. IT COULD BE SEVERAL DIFFERENT THINGS. THAT'S WHY I NEEDED TO DO A LITTLE MORE INVESTIGATION BEFORE NECESSARILY JUMPING TO A CONCLUSION.

Q THAT AREA THAT HAD BEEN RAKED AND [79] WATERED, HOW FAR BACK FROM THE PROPERTY LINE WAS IT?

MS. NAJERA: I'M GOING TO OBJECT. THIS IS IRRELEVANT WITH THIS WITNESS.

THE COURT: OVERRULED.

IF HE KNOWS WHERE THE PROPERTY LINE IS LOCATED.

IT'S CLOSE TO THE GATE?

Q BY MR. POPE: I'LL REPHRASE THE QUESTION, YOUR HONOR.

THERE IS A GATE AND A FENCE THAT SEPARATE CUSKEY'S PROPERTY FROM THIS ACCESS ROAD/ DRIVEWAY, CORRECT?

A YES, SIR.

Q NOW, THE AREA THAT HAD BEEN – APPEARED TO HAVE BEEN RAKED OVER AND WATERED, HOW FAR BACK FROM THAT FENCE LINE WAS THAT AREA?

A I'M NOT REALLY SURE.

Q WELL, IT WAS NOT ADJACENT TO THE FENCE LINE, WAS IT?

A I REALLY DON'T KNOW.

Q IN FACT, IT WAS ABOUT 30 FEET; WASN'T IT?

MS. NAJERA: I'M GOING TO OBJECT IF THIS WITNESS DOESN'T KNOW WHERE IT WAS.

THE COURT: THAT SEEMS TO BE THE RESPONSE, COUNSEL.

MR. POPE: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

[80] THE COURT: ANYTHING FURTHER FROM THIS WITNESS.

MS. NAJERA: NO, YOUR HONOR.

MR. ESCOBEDO: NO, YOUR HONOR.

THE COURT: THANK YOU, SERGEANT.

THE WITNESS: THANK YOU, SIR.

(THE COURT HEARD OTHER UNRELATED CALENDAR MATTERS.)

THE COURT: YOU MAY CALL YOUR NEXT WITNESS.

MR. ESCOBEDO: DEFENSE WOULD LIKE TO CALL, RICHARD CEBALLOS.

MS. NAJERA: YOUR HONOR, I'M GOING TO OBJECT TO DEFENSE CALLING MR. CEBALLOS.

THE COURT: OFFER OF PROOF?

MR. ESCOBEDO: YOUR HONOR, MR. CEBALLOS WAS A WITNESS TO THIS. HE WENT OUT TO THE LOCATION, CAN VERIFY THE DISTANCES, CAN VERIFY THE CONDITION OF THE ROAD, CAN VERIFY WHERE THE ADDRESSES ARE LOCATED. AND HE CAN TESTIFY AS TO THE CONDITION OF THE ROADWAY AND WHETHER OR NOT, IN HIS OPINION, TRACKS COULD BE – I KNOW HE'S NO EXPERT, BUT HE CAN TESTIFY AS TO THE CONDITION OF THE ROADWAY. I THINK THAT'S RELEVANT BECAUSE AT THIS TIME, WE DON'T HAVE ANY – ANY THIRD PARTY TO TESTIFY AS TO WHAT THAT LOCATION WAS REALLY ALL [81] ABOUT.

THE COURT: ISN'T THE ROADWAY AS DEPICTED IN THE VIDEO THAT THE COURT SAW?

MR. ESCOBEDO: YES. BUT THAT VIDEO DOESN'T DO TRUE JUSTICE BECAUSE YOU ACTUALLY HAVE TO BE ON TOP OF IT, BECAUSE IT VARIES IN MATERIAL. IT GOES FROM CONCRETE TO ASPHALT TO GRAVEL TO DIRT. AND I BELIEVE –

THE COURT: I COULD TELL THAT FROM THE VIDEO.

MR. ESCOBEDO: HE CAN ALSO TESTIFY AS TO WHETHER IT WOULD – YOU KNOW, EVEN POSSIBLE WHETHER TRACKS COULD LEAD OUT FROM THE DRIVEWAY ONTO THE ROADWAY, THIRD STREET AND TRAVERSE, YOU KNOW, 40, 50 FEET DOWN TO 241 OR THEREABOUTS. HE CAN ALSO TESTIFY AS TO THE – THE – THE CONDITION OF THE BACKYARD, WHAT TYPE OF THINGS ARE BACK THERE.

THE COURT: AS OF WHAT DATE?

MS. NAJERA: AS OF A FEW DAYS AGO, YOUR HONOR.

MR. ESCOBEDO: THIS WAS A FEW DAYS AGO, BUT –

THE COURT: COUNSEL, WHY IS THAT MATERIAL AT ALL TO THE COURT'S DETERMINATION HERE?

MR. ESCOBEDO: BECAUSE, YOUR HONOR, I'M TRYING TO ESTABLISH WHEN THIS AFFIDAVIT WAS WRITTEN –

THE COURT: WHICH WAS ON WHAT DATE?

[82] MR. ESCOBEDO: AUGUST 3RD, I BELIEVE.

THE COURT: OF '99?

MS. NAJERA: UM-HUM.

THE COURT: AND YOU WANT HIM TO TESTIFY TO CONDITIONS AS THEY EXISTED A FEW DAYS AGO?

MR. ESCOBEDO: THE DEPUTY FAILED TO INCLUDE IN HIS AFFIDAVIT THE FACT THAT THIS YARD WAS LITTERED WITH HUNDREDS OF AUTO PARTS.

THE COURT: BUT HOW DOES DEPUTY D.A. CEBALLOS' TESTIMONY ASSIST THE COURT IN THAT REGARD IF HE MADE OBSERVATIONS A FEW DAYS AGO AND THIS AFFIDAVIT WAS BASED ON OBSERVATIONS IN AUGUST OF '99?

MR. ESCOBEDO: HE CAN CONFIRM THE EXISTENCE OF ALL THESE AUTO PARTS BACK THERE.

THE COURT: AS TO THAT DAY?

MR. ESCOBEDO: AS TO THAT DAY.

THE COURT: THE COURT WILL SUSTAIN THE OBJECTION IF THAT'S – I'LL GO POINT BY POINT. IF YOU ARE TALKING ABOUT THE CONDITION OF WHAT'S CONTAINED IN THE YARD TODAY, THE OBJECTION IS SUSTAINED.

MR. ESCOBEDO: OKAY.

YOUR HONOR, WITH REGARDS TO THE MATERIAL, THE ROADWAY MATERIAL – STRIKE THAT.

WITH REGARDS TO THE CHARACTERIZATION OF THIS DRIVEWAY, I THINK DEPUTY WALL MISLED COMMISSIONER FALLS – JUDGE FALLS – IN [83] CHARACTERIZING THIS AS A DRIVEWAY. THIS

CLEARLY WAS NOT A DRIVEWAY. THIS WAS AN ACCESS ROAD, SOMETHING PEOPLE –

THE COURT: WELL, THE COURT SAW THAT THIS – THE COURT SAW THAT. I DON'T NEED THE D.A.

MR. ESCOBEDO: HE CAN TESTIFY –

THE COURT: ONE MOMENT. LET ME TAKE THAT ONE POINT.

IT LOOKS LIKE, FIRST OF ALL, IT APPARENTLY CANNOT BE READILY DETERMINED WHETHER OR NOT THIS IS CITY OR COUNTY PROPERTY. IT SEEMS MORE LIKE AN ACCESS ROAD OR EVEN IT COULD BE A COMMON DRIVEWAY FOR ALL THE RESIDENTS THERE. I DON'T KNOW HOW MANY RESIDENCES ARE ON EACH SIDE OR BEHIND, IN ADDITION TO THE SUBJECT PROPERTY HERE, BUT I MEAN WHAT DIFFERENCE DOES THAT MAKE, WHETHER WE CALL IT A DRIVEWAY OR OTHER – ACCESS ROAD?

MR. ESCOBEDO: WELL, I THINK HE COULD TESTIFY AND SHOW THAT IT WAS – THE DEPUTIES WERE MISLEADING THE COURT FROM THE GET-GO BY CHARACTERIZING THIS AS A SMALL DRIVEWAY.

THE COURT: WELL, IT IS A SMALL ACCESS ROAD.

MR. ESCOBEDO: WELL, IT'S 30 FEET WIDE, 200 – 300 FEET LONG. AND –

THE COURT: WELL, THE POINT BEING IT'S NOT A STREET, RIGHT?

AND THE COURT COULD SEE FROM THE [84] VIDEO THAT WHOEVER WAS MAKING THE VIDEO, I DON'T KNOW WHO WAS PREPARING THAT VIDEO OR ACTUALLY PHOTOGRAPHING THE AREA THERE, BUT IT WAS QUITE CLEAR TO THE COURT THAT YOU COULD CERTAINLY SEE NUMEROUS TIRE TRACKS. AND IT APPEARS AS IF THE CAMERA PERSON WAS GOING TO OTHER AREAS BUT THE ROADWAY WHERE THE TIRE TRACKS WERE LOCATED. I DON'T KNOW WHEN THAT VIDEO WAS PREPARED, BUT, CLEARLY, THAT ACCESS ROAD, YOU CAN DETERMINE TIRE TRACKS AND IMPRESSIONS FROM THAT.

YOU CAN LOOK AT THAT AGAIN, AND I'LL POINT OUT WHAT I'M REFERRING TO, IF YOU WOULD LIKE.

MR. ESCOBEDO: OKAY.

THE COURT: YOU WANT TO DO THAT?

MR. ESCOBEDO: SURE, YOUR HONOR, I'D LIKE TO REVIEW THAT TAPE.

THE COURT: ALL RIGHT.

MR. ESCOBEDO: WITH REGARD TO THE CHARACTERIZATION AS TIRE TRACKS IN THE AFFIDAVIT, DEPUTY CEBALLOS WAS CONTACTED BY DEPUTY WALL, WHO INFORMED DEPUTY CEBALLOS THAT, IN FACT, THEY WERE NOT TIRE TRACKS, THAT THEY WERE MORE LIKELY TO BE CHARA[C]TERIZED AS A – GOUGES, TIRE GOUGES.

THE COURT: NOW, ARE WE TALKING ABOUT ON THE STREET OR ARE WE TALKING ABOUT ON THE ACCESS ROAD?

MR. ESCOBEDO: BOTH, I WOULD ASSUME.

MS. NAJERA: YOUR HONOR, THERE IS NO – [85] NOTHING.

THE COURT: THE TESTIMONY BEFORE THIS COURT, THERE IS SOME SCRATCHES OUT THERE ON THE STREET AND THERE ARE A COMBINATION OF RIM IMPRESSIONS AND TIRE TRACKS ON THE SOFTER PORTIONS OF THE ACCESS ROAD. THAT'S THE EVIDENCE BEFORE THIS COURT.

I REALIZE THAT BOTH COUNSEL HAVE USED THE WORD, GOUGES, ON A COUPLE OF OCCASIONS, BUT NO WITNESS HAS USED OR CONFIRMED THAT TERMINOLOGY, GOUGES. THEY HAVE ALL DESCRIBED WHAT THEY OBSERVED ON THE HARD ASPHALT SUCH AS ON THE MAIN ROADWAY AS A SCRATCH WHICH APPEARED TO BE CAUSED BY A – THE EDGES OF A RIM, WHERE THE RUBBER HAS SEPARATED THEREFROM, AND THE OTHER PORTIONS AS A TIRE TRACK AND THE EDGE OF THE RIM ON THE SOFTER PORTION OF THE ACCESS ROAD. THAT'S WHAT'S BEFORE THIS COURT. THAT'S THE TESTIMONY THAT'S BEFORE THIS COURT. AND, FRANKLY, IT'S NOT INCONSISTENT WITH WHAT'S IN THE AFFIDAVIT.

MR. ESCOBEDO: MR. CEBALLOS CONTACTED WALL, WHO INDICATED THAT HE WANTED TO MODIFY THE WORDING IN THE AFFIDAVIT FROM TIRE TRACKS TO TIRE GOUGES. THAT WAS

REFLECTED IN A REPORT BY MR. CEBALLOS DATED MARCH 6. I THINK THAT'S RELEVANT AS HERE WE'RE –

THE COURT: MARCH 6 OF?

MR. ESCOBEDO: 2000.

THE COURT: 2000.

[86] MR. ESCOBEDO: HERE WE'RE SIX MONTHS LATER –

THE COURT: BECAUSE THE DEPUTY D.A. INTERVIEWS A WITNESS AND SAYS – MAKES THE SUGGESTION THAT HE WANTS TO MODIFY THE AFFIDAVIT TO THE SEARCH WARRANT?

MR. ESCOBEDO: YES.

BECAUSE HERE WE'RE SIX MONTHS LATER, THE AFFIDAVIT WAS WRITTEN WHEN ALL THIS MATERIAL WAS FRESH IN HIS – HIS MIND. HE WROTE DOWN TIRE TRACKS. NOW SINCE WE DO A LITTLE INVESTIGATION, THERE IS NO WAY TIRE TRACKS COULD BE FOLLOWED ON THIS DIRTWAY, HE WANTS TO MODIFY IT AND PUT DOWN TIRE GOUGES.

THE COURT: WHO DOES? WHO DOES?

BECAUSE THE DEPUTY D.A. DOES, THAT GOES TO IN SOME WAY IMPACT –

MR. ESCOBEDO: NO, DETECTIVE WALL.

THE COURT: – IMPACT THIS SEARCH WARRANT AFFIDAVIT?

MR. ESCOBEDO: DETECTIVE WALL REQUESTED THAT THERE BE A MODIFICATION OF THE WORDING.

THE COURT: WELL, I DON'T KNOW WHY THAT WOULD BE NECESSARY. THE WORD, TIRE TRACK, IS PRETTY BROAD AND GENERAL. IF YOU ARE TALKING ABOUT THE TREAD IMPRESSION THAT A TIRE MIGHT LEAVE ON A SURFACE AS OPPOSED – AND IN ADDITION TO WHAT A – THE EDGE OF A RIM MIGHT LEAVE ON A HARDER (SIC) IMPRESSION, TIRE TRACK IS – IS CERTAINLY BROAD [87] ENOUGH TO ENCOMPASS IT ALL.

MR. ESCOBEDO: I WOULD DIFFER WITH THAT, YOUR HONOR.

I THINK IF, IN FACT, THERE WERE TIRE GOUGES, INDENT – WHAT IS THE WORD HERE?

THE COURT: WELL, THERE IS NO TESTIMONY OF ANY GOUGES ANYWHERE.

MR. ESCOBEDO: INDENTATIONS.

IF ON AUGUST 3RD, THERE WAS, IN FACT, INDENTATIONS MADE ON THE ASPHALT, DEPUTY WALL WOULD HAVE OBSERVED THAT, WOULD HAVE PUT IT SPECIFICALLY IN HIS AFFIDAVIT BECAUSE THAT IS CONCRETE –

THE COURT: WE'RE LOSING SIGHT OF WHERE WE ARE HERE. WE'RE TALKING ABOUT THE PROPRIETY OF HAVING THE DEPUTY DISTRICT ATTORNEY TESTIFYING.

MR. ESCOBEDO: I WOULD LIKE TO BRING IN THE DEPUTY D.A.

THE COURT: AND YOU ARE MAKING AN OFFER OF PROOF. AND SO FAR, WHAT THE COURT HAS HEARD, IT'S JUST NOT RELEVANT. BUT I'LL CONTINUE TO HEAR OTHER POINTS YOU INTEND TO RAISE.

NOW, YOU HAVE TALKED ABOUT THE CONDITION – NOW YOU ARE TALKING ABOUT THE CONDITION OF THE PROPERTY TODAY. THAT'S NOT RELEVANT, SIX TO SEVEN MONTHS LATER. IT'S MORE THAN THAT. EIGHT OR NINE MONTHS LATER, AREN'T WE? WHY IS THAT RELEVANT?

MR. POPE: YOUR HONOR, THIS – THIS WORD, [88] GOUGES, IT IS NOT SOMETHING WE INVENTED. THIS IS IN THE MEMO FROM THE DEPUTY DISTRICT ATTORNEY BASED ON A CONVERSATION WHICH HE HAS HAD WITH DETECTIVE WALL.

THE COURT: WAIT, WAIT.

MR. POPE: NOW, THAT WOULD BECOME AN INCONSISTENT STATEMENT IF THEY WANT TO MODIFY IT, THEY SAY, WELL, IT'S NOT TIRE TRACKS, IT'S GOUGES. AND NOW WE HEAR IN COURT, WELL, IT'S NEITHER ONE OF THOSE. IT'S NOT TIRE TRACKS, IT'S NOT GOUGES, IT IS AN INDENTATION.

THE COURT: WELL, THE COURT IS ONLY WANTING TO DETERMINE AT THIS POINT THE OFFER OF PROOF AS TO WHY THE TESTIMONY OF THE DEPUTY D.A. IS NEEDED IN THIS CASE.

THE COURT CAN VIEW THE VIDEO TAPE. I HAVE SEEN THE VIDEO TAPE. I HAVE HEARD THE TESTIMONY OF THE OTHER WITNESSES. THE COURT IS NOT CONCERNED ABOUT THE PRE-EXISTING CONDITION OF THE PREMISES.

SO WHAT'S THE OFFER OF PROOF?

MR. ESCOBEDO: HE WILL INDICATE THE PRIOR – AN INCONSISTENT STATEMENT MADE BY DETECTIVE WALL.

THE COURT: ALL RIGHT.

YOU MAY, CALL HIM FOR THAT PURPOSE.

[89] RICHARD CEBALLOS, CALLED AS A WITNESS ON BEHALF OF DEFENDANT LONGORIA, WAS SWORN AND TESTIFIED AS FOLLOWS:

THE CLERK: WOULD YOU RAISE YOUR RIGHT HAND TO BE SWORN, PLEASE.

YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

THE WITNESS: I DO.

THE CLERK: PLEASE STEP FORWARD AND BE SEATED.

(PAUSE.)

THE CLERK: STATE AND SPELL YOUR FULL NAME FOR THE RECORD, PLEASE.

THE WITNESS: RICHARD CEBALLOS.

THE CLERK: THANK YOU.

THE COURT: YOU MAY PROCEED.

MR. ESCOBEDO: THANK YOU, YOUR HONOR.

[90] DIRECT EXAMINATION

BY MR. ESCOBEDO:

Q MR. CEBALLOS, COULD YOU PLEASE STATE YOUR OCCUPATION FOR THE RECORD.

A DEPUTY DISTRICT ATTORNEY FOR THE COUNTY OF LOS ANGELES.

Q ON MARCH 3RD, YEAR 2000, AT APPROXIMATELY 2:15 P.M., DID YOU SPEAK WITH DETECTIVE WALL?

A YES.

Q OKAY.

AND THIS WAS OVER THE TELEPHONE?

A YES.

Q AND DURING THE COURSE OF YOUR CONVERSATION, DID YOU DISCUSS THIS CASE, PEOPLE VERSUS CUSKEY AND LONGORIA?

A YES.

Q AND DID YOU SPECIFICALLY DISCUSS THE FACT THAT THERE WAS A MOTION PENDING TO QUASH THE SEARCH WARRANT?

A YES.

Q DID YOU THEN QUESTION THE DETECTIVE REGARDING TIRE TRACKS?

A I DID.

Q DID THE DETECTIVE MAKE ANY COMMENT TO YOU REGARDING MODIFYING THE WORD, "TIRE TRACKS"?

A YES, HE DID.

Q AND WHAT WAS THAT COMMENT THAT THE [91] DETECTIVE MADE?

A HE INDICATED TO ME IN RESPONSE TO A QUESTION, THAT AFTER SPEAKING WITH THE DEPUTIES IN THIS CASE, DEPUTY SIMPKINS AND SPITULSKI, THAT HE NEEDED TO OR HE WANTED TO MODIFY THE WORD THAT HE HAD USED IN HIS AFFIDAVIT, THAT HE WANTED TO CHANGE IT FROM TIRE TRACKS TO TIRE GOUGES, WHICH HE EXPLAINED WERE CAUSED BY THE TIRE RIMS RUBBING OR MARKING THE ASPHALT OF THE ROADWAY.

Q AND DID YOU INDICATE TO HIM, MEANING DETECTIVE WALL, THAT IN HIS AFFIDAVIT, HE HAD INDICATED THAT THERE WERE SPECIFICALLY TIRE TRACKS AND NOT TIRE GOUGES?

A I DON'T REMEMBER AT THAT TIME BRINGING IT UP TO HIM. I THINK MY QUESTION TO HIM AT THAT POINT WAS WHEN DID HE AND THE DEPUTIES COME TOGETHER AND DECIDE THAT THAT

NEEDED TO BE MODIFIED. AND HE DIDN'T RESPOND.

Q AND WHAT DO YOU THINK HE MEANT BY MODIFY?

MS. NAJERA: I'M GOING TO OBJECT, YOUR HONOR.

THE COURT: SUSTAINED, IF YOU ARE ASKING HIM WHAT HE MEANT.

MS. NAJERA: CALLS FOR SPECULATION, YEAH.

Q BY MR. ESCOBEDO: NOW, YOU HAD AN OPPORTUNITY TO READ THE AFFIDAVIT BY DETECTIVE WALL, CORRECT?

MS. NAJERA: I'M GOING TO OBJECT TO ANYTHING [92] BEYOND THE SCOPE OF THESE QUESTIONS CONCERNING ANY PRIOR STATEMENTS.

THE COURT: OFFER OF PROOF.

MR. ESCOBEDO: THIS GOES TO WHAT – ANOTHER INCONSISTENT STATEMENT AS TO WHAT WAS WRITTEN IN THE AFFIDAVIT.

MS. NAJERA: I'M GOING TO OBJECT TO ANYTHING THAT ISN'T BASED ON A STATEMENT MADE BY THE OFFICER.

MR. ESCOBEDO: THE AFFIDAVIT WAS A STATEMENT BY –

THE COURT: WELL, AN OUT OF COURT – WELL, A STATEMENT TO THIS WITNESS IS WHAT MISS NAJERA IS ADDRESSING. IS THAT WHAT YOUR QUESTION IS ATTEMPTING TO ADDRESS?

MR. ESCOBEDO: OKAY.

I'LL GO BACK TO THE CURRENT CONVERSATION, YOUR HONOR.

THE COURT: OKAY.

Q BY MR. ESCOBEDO: DID YOU ASK THE DETECTIVE WHETHER HE SPECIFICALLY INCLUDED IN HIS AFFIDAVIT TIRE GOUGES IN HIS DESCRIPTION AS TO THE PATH THAT LEAD FROM THE STOLEN VEHICLE TO THE BACK GATE?

A DID I ASK HIM THAT QUESTION?

Q RIGHT.

A NO, I DON'T BELIEVE I DID.

Q NOW, WAS THIS THE FIRST TIME THAT YOU HEARD THE PHRASE, TIRE GOUGES?

[93] A YES.

Q AND DID YOU ASK HIM WHY, SUDDENLY, HE IS NOW CHANGING THE CHARACTERIZATION OF THOSE MARKS FROM TIRE TRACKS TO TIRE GOUGES?

A WELL, AS I STATED BEFORE, I ASKED HIM AFTER HE TOLD ME THAT HE WANTED TO MODIFY IT FROM TIRE TRACKS TO TIRE GOUGES, I ASKED HIM WHY OR WHEN DID HE AND THE DEPUTIES GET TOGETHER AND DECIDE THAT THAT NEEDED

TO BE MODIFIED FROM TIRE TRACKS TO TIRE GOUGES.

Q AND DID YOU TELL HIM THAT YOU WENT TO THE LOCATION AND OBSERVED THE DRIVEWAY?

MS. NAJERA: I'M GOING TO OBJECT TO ANYTHING NOT DEALING WITH THE STATEMENT MADE BY THE OFFICER.

THE COURT: SUSTAINED, UNLESS YOU HAVE AN INDEPENDENT OFFER OF PROOF.

MR. ESCOBEDO: WELL, YOUR HONOR, THAT WOULD GO TO THE BASIS AS TO WHY HE WAS INQUIRING AS TO, YOU KNOW, TIRE TRACKS, TIRE GOUGES, THE CHARACTERIZATION OF THE MARKS.

THE COURT: WELL, BECAUSE OF THIS WITNESS' IMPRESSIONS OF WHAT HE SAW A FEW DAYS AGO?

MR. ESCOBEDO: CORRECT.

THE COURT: SUSTAINED.

MR. ESCOBEDO: NOTHING FURTHER, YOUR HONOR.

THE COURT: MR. POPE.

[94] CROSS-EXAMINATION

BY MR. POPE:

Q DID YOU CALL THE DEPUTY YOURSELF?

A I DON'T KNOW IF I CALLED HIM AND LEFT A MESSAGE OR IF HE WAS RETURNING MY CALLS.

Q AND THE REASON FOR YOUR CALL WAS YOUR CONCERN OVER WHAT YOU FELT COULD OR COULD NOT BEEN SEEN EITHER ON THE ROAD OR THE DRIVEWAY; IS THAT CORRECT?

MS. NAJERA: I'M GOING TO OBJECT AS IRRELEVANT.

THE COURT: SUSTAINED.

DOESN'T – IT'S JUST NOT RELEVANT WHAT THIS WITNESS COULD HAVE SEEN TODAY OR A FEW DAYS AGO.

Q BY MR. POPE: SIR, WHEN YOU SPOKE WITH THE DETECTIVE, DID YOU TELL HIM THAT YOU FELT THAT YOU COULD NOT SEE TIRE TRACKS?

MS. NAJERA: I'M GOING TO OBJECT TO ANYTHING –

MR. POPE: COULD I WITHDRAW THE QUESTION AND START AGAIN?

THE COURT: YES.

Q BY MR. POPE: WHEN YOU CALLED – WHEN YOU SPOKE WITH THE DEPUTY, DID YOU TELL HIM THAT YOU FELT THAT, IN YOUR OPINION, IT WAS SOMEWHAT IMPLAUSIBLE THAT TIRE MARKS COULD BE SEEN ON THIS DRIVEWAY?

MS. NAJERA: I'M GOING TO OBJECT AS –

[95] THE COURT: SUSTAINED.

MR. POPE: YOUR HONOR, THAT –

THE COURT: THIS WITNESS' OPINION IS NOT RELEVANT AS TO THIS COURT'S DETERMINATION.

MR. POPE: AS AN OFFER OF PROOF, YOUR HONOR, THIS WOULD GO TO –

THE COURT: WAIT A MINUTE.

WHETHER OR NOT HE BELIEVES IT'S IMPLAUSIBLE THAT IT COULD HAVE HAPPENED THE WAY IS ARTICULATED IN THE AFFIDAVIT IS NOT RELEVANT.

MR. POPE: YOUR HONOR – YOUR HONOR, IT'S NOT BEING OFFERED FOR THE PROOF OF WHAT HE IS SAYING, RATHER, IT IS GOING TO WHY HE WOULD ASK THE QUESTION OF THE DEPUTY, BECAUSE HE FELT THAT IT NEEDED SOME EXPLANATION. AND THE DEPUTY WOULD THEN TURN AROUND AND SAY – AND SAY, OKAY. TIRE TRACKS, NO. NO, NOT TIRE TRACKS. YOU MIGHT BE RIGHT, MAYBE THEY CAN'T BE SEEN. BUT WE WILL GO WITH GOUGES BECAUSE THOSE CANNOT BE DISPUTED. THAT'S THE BASIS FOR MY QUESTION TO THIS DEPUTY, YOUR HONOR.

THE COURT: ALL RIGHT.

THE WITNESS: CAN YOU RESTATE THE QUESTION? SORRY.

MR. POPE: I'LL TRY.

Q WHEN YOU INITIATED CONVERSATION WITH THE DEPUTY, DID YOU INDICATE TO HIM YOUR CONCERN THAT TIRE MARKS WOULD BE

VERY DIFFICULT TO SEE ON THE GRAVEL DRIVEWAY?

[96] A YES, I DID.

Q AND WAS IT AFTER THAT, THAT HE INDICATED TO YOU THAT THERE SHOULD BE A CHANGE IN THE AFFIDAVIT?

A YES.

MR. POPE: I HAVE NOTHING FURTHER.

CROSS-EXAMINATION

BY MS. NAJERA:

Q MR. CEBALLOS, HOW MANY CONVERSATIONS DID YOU HAVE WITH DETECTIVE WALL?

A I HAD TWO CONVERSATIONS WITH HIM OVER THE PHONE AND ANOTHER CONVERSATION OR MEETING IN PERSON.

Q OKAY. AND WHEN YOU DISCUSSED THE STATEMENT THAT YOU PLACED IN A MEMO DATED MARCH 2ND OF THE YEAR 2000, HOW LONG WAS THAT CONVERSATION?

A PROBABLY NO MORE THAN FIVE, MAYBE TEN MINUTES, AT MOST. IT WASN'T VERY LONG.

Q AND IN THE COURSE OF THAT FIVE TO TEN-MINUTE CONVERSATION, DID YOU SPECIFICALLY DISCUSS WITH DEPUTY WALL THE ASPHALT STREET VERSUS THE – WHAT WE'RE CALLING THE DRIVEWAY?

A I'M SORRY. I'M – MAYBE I DIDN'T FOLLOW YOUR QUESTION.

Q THE COURSE OF THAT FIVE OR SO MINUTE CONVERSATION THAT YOU HAD WITH DEPUTY WALL, DID YOU [97] SPECIFICALLY ASK HIM ABOUT THE ASPHALT STREET AND THEN THE DRIVEWAY?

A I BELIEVE I DID.

Q BUT DO YOU KNOW FOR CERTAIN RIGHT NOW AS YOU SIT THERE?

A NO.

Q DO YOU RECALL GOING INTO DETAIL WITH HIM OVER WHAT MARKINGS WOULD HAVE BEEN MADE IN THE ASPHALT STREET?

A YOU ARE REFERRING TO THE FIRST, CONVERSATION OR THE SECOND?

Q NO, I'M TALKING ABOUT THE CONVERSATION THAT YOU REPORTED IN YOUR ADDENDUM DATED MARCH 2ND.

A RIGHT.

I EXPLAINED TO DETECTIVE WALL –

Q WHAT I'M ASKING YOU IS DID YOU SPECIFICALLY DISCUSS WITH HIM THE ASPHALT STREET OR DID YOU DISCUSS WITH HIM THE DRIVEWAY?

A ARE WE TALKING ABOUT –

MR. POPE: OBJECTION, COMPOUND.

THE COURT: IT'S NOT COMPOUND. IT'S IN THE DISJUNCTIVE, DID HE DISCUSS THE DRIVEWAY OR THE ASPHALT STREET.

THE WITNESS: WE WERE TALKING ABOUT THE SO-CALLED DRIVEWAY.

Q BY MS. NAJERA: DID YOU EVER DISCUSS THE – OR DO YOU RECALL EVER DISCUSSING THE ASPHALT STREET WITH HIM?

[98] A NO.

Q DO YOU KNOW IF HE WAS TALKING ABOUT THE ASPHALT STREET WHEN HE WAS TALKING TO YOU ABOUT WHAT HE OBSERVED OR WHAT WAS OBSERVED BY –

MR. POPE: OBJECTION, CALLS –

MS. NAJERA: – OR WHAT WAS OBSERVED BY SPITULSKI AND SIMPKINS?

MR. POPE: CALLS FOR SPECULATION.

THE COURT: YOU'LL HAVE TO REPHRASE THAT, MISS NAJERA.

MS. NAJERA: OKAY.

Q DO YOU – HOW CAN YOU SIT THERE AND TELL US NOW WHETHER OR NOT DEPUTY WALL KNEW THAT YOU WERE TALKING ABOUT THE ALLEYWAY VERSUS THE STREET?

A I THINK IT WAS VERY CLEAR IN OUR CONVERSATION WE WERE TALKING –

Q WAS IT CLEAR TO YOU –

THE COURT: ONE MOMENT.

MR. POPE: OBJECTION.

THE COURT: LET THE WITNESS RESPOND.

IT WAS CLEAR WHAT, MR. CEBALLOS?

THE WITNESS: IT SEEMED VERY CLEAR DURING OUR CONVERSATION WE WERE TALKING ABOUT THIS AREA CALLED THE DRIVEWAY.

Q BY MS. NAJERA: THIS IS BECAUSE IT WAS CLEAR IN YOUR MIND, IS THAT CORRECT?

MR. POPE: OBJECTION, ARGUMENTATIVE.

THE COURT: OVERRULED.

[99] THE WITNESS: YES.

Q BY MS. NAJERA: WITH REGARD TO DEPUTY WALL HERE, YOU WERE TALKING TO HIM FOR ALL ABOUT FIVE MINUTES, RIGHT?

MR. POPE: OBJECTION, MISSTATES THE TESTIMONY.

THE COURT: OVERRULED.

THE WITNESS: FIVE TO TEN MINUTES.

Q BY MS. NAJERA: AND AT THAT TIME, YOU WERE ACCUSING HIM OF SOME THINGS, WEREN'T YOU?

A NO, I WASN'T ACCUSING HIM OF ANYTHING. I WAS TRYING TO CLARIFY AND ASK HIM QUESTIONS ABOUT THE WARRANT AND THE AFFIDAVIT.

I WAS TRYING TO CLARIFY SOME OF THE STATEMENTS THAT WERE MADE IN THE AFFIDAVIT AND ASKING HIM QUESTIONS OR HAVING HIM RESPOND TO SOME OF THE ALLEGATIONS THAT THE DEFENSE WAS MAKING.

Q AND IN YOUR DESIRE TO CLARIFY THINGS, DID YOU TALK TO DEPUTY SPITULSKI?

A NO, I DIDN'T.

Q DID YOU TALK TO DEPUTY SIMPKINS?

A NO, I DIDN'T.

MS. NAJERA: NOTHING FURTHER.

CROSS-EXAMINATION (RESUMED.)

BY MR. POPE:

Q DEPUTY SPITULSKI AND SIMPKINS DIDN'T SIGN THE AFFIDAVIT, DIDN'T PREPARE THE WARRANT, DID [100] THEY?

A NO, IT WAS SIGNED BY SERGEANT WALL.

MR. ESCOBEDO: NOTHING FURTHER.

MS. NAJERA: NOTHING FURTHER.

THE COURT: THANK YOU, SIR.

YOU MAY STEP DOWN.

MR. ESCOBEDO: NO FURTHER WITNESSES, YOUR HONOR.

THE COURT: MR. POPE, YOU HAVE ANY WITNESSES?

MR. POPE: NO, YOUR HONOR.

BUT I WOULD OFFER INTO EVIDENCE –

THE COURT: ONE MOMENT.

WILL THERE BE ANY REBUTTAL WITNESSES?

MS. NAJERA: NO, YOUR HONOR.

THE COURT: ALL RIGHT.

YES, MR. POPE.

MR. POPE: YES.

YOUR HONOR, I WOULD LIKE TO OFFER INTO EVIDENCE THE AFFIDAVIT OF MY CLIENT, MR. CUSKEY. IT PROVIDES SOME OF THE BACKGROUND CONCERNING HIS RELATIONSHIP WITH, I BELIEVE, IT'S SIMPKINS, AND – THAT – FOR THAT PURPOSE.

THE COURT: ANY OBJECTION?

MS. NAJERA: I WOULD OBJECT, YOUR HONOR.

THE COURT: IT IS SUSTAINED. I DON'T HAVE ANY LEGAL BASIS UPON WHICH TO ASSUME SUCH AN [101] AFFIDAVIT, MR. POPE.

MR. POPE: IF I MAY JUST HAVE A MOMENT, PLEASE?

THE COURT: UNLESS YOU WANT TO POINT THE COURT'S ATTENTION TO SOME LEGAL BASIS FOR RECEIVING IT.

(PAUSE.)

MR. POPE: NO, YOUR HONOR. WE WILL – WE WILL REST.

THE COURT: ALL RIGHT.

ARGUMENT.

MR. ESCOBEDO: YOUR HONOR, OUR POSITION, THE DETECTIVES AND DEPUTIES IN THIS MATTER DELIBERATELY MISLED THE MAGISTRATE WITH DELIBERATE FALSEHOODS AND INTENTIONALLY OMITTED MATERIAL INFORMATION. SPECIFICALLY, IN THE AFFIDAVIT WHICH DETECTIVE WALL PREPARED, HE INDICATED THAT THE STOLEN VEHICLE WAS FOUND AT 214. NOW, I KNOW THERE HAS BEEN TESTIMONY REGARDING IT WAS A SIMPLE MISTAKE, HE MADE A MISTAKE, THAT HE MEANT TO SAY 234 AND SOMEHOW WRITES 214. I – MY POSITION IS, YOUR HONOR, THAT THE OFFICER DELIBERATELY WROTE DOWN AND INCLUDED IN HIS AFFIDAVIT 214. WHY? BECAUSE THAT WOULD PLACE THE STOLEN VEHICLE DIRECTLY IN FRONT OF THE ALLEYWAY.

THE COURT: KNOWING THAT THERE IS NO 214. WHY WOULD HE DO THAT?

[102] MR. ESCOBEDO: CORRECT, YOUR HONOR.

THE COURT: WHY?

MR. ESCOBEDO: BECAUSE THAT WOULD SUPPORT HIS THEORY THAT TRACKS COULD THEN BE FOLLOWED FROM THE DRIVEWAY/ROADWAY ACROSS THE 40 FOOT WIDE PAVED PUBLIC ROAD TO THE STOLEN VEHICLE. IT'S A LOT EASIER TO

MAKE THAT ARGUMENT REGARDING THE TRACKS BY PLACING THE VEHICLE THERE RATHER THAN APPROXIMATELY 50 FEET DOWN THE ROAD TO WHERE 241 IS.

THE COURT: YOU MEAN 30 TO 40 FEET.

MR. ESCOBEDO: WELL, YOUR HONOR, I BEG WITH THAT DESCRIPTION. I THINK IT'S LONGER THAN THAT.

THE COURT: WELL, I'M ONLY GOING BY THE EVIDENCE BEFORE THE COURT. I DON'T – THIS IS THE FIRST TIME I HAVE HEARD THIS 50 FEET.

MR. ESCOBEDO: WELL, YOU CAN LOOK AT THE VIDEO AND JUDGE THAT.

ADDITIONALLY, THE BASIS OF THIS AFFIDIVAT IS – AND THE CONNECTION THAT THE POLICE MAKE WITH THE STOLEN VEHICLE TO DEFENDANT CUSKEY'S PROPERTY ARE TIRE TRACKS. AS YOU OBSERVED, THIS ALLEYWAY, CHARACTERIZED AS A DRIVEWAY BY THE DETECTIVES, IS TWO TO 300 FEET, AND ACCORDING TO SPITULSKI 200 TO 300 YARDS LONG. IT IS A VERY LONG ROADWAY, WHATEVER.

AND I THINK WHEN THE DETECTIVE INCLUDED IN HIS AFFIDAVIT, DRIVEWAY, THE MENTAL IMAGE [103] THAT THIS MAGISTRATE FORMED – AND IT'S VERY EASY TO DO. WHEN YOU THINK IT'S A DRIVEWAY, YOU THINK OF WHAT'S IN FRONT OF A FOUR-BEDROOM HOUSE, A STRIP OF CONCRETE, OR, IN NICER AREAS MAYBE A CURVING STRIP. BUT THIS IS NOT 40 OR 50 FEET LONG. THIS

IS 200, 300, TWO TO 300 YARDS LONG. WE DON'T KNOW THE EXACT LENGTH.

THE COURT: WELL, I WANT TO CORRECT ONE THING. YOU ARE SAYING THE IMPRESSION ONE WOULD HAVE IN READING THIS AFFIDAVIT. THIS COURT WAS DUTY-BOUND TO READ THE AFFIDAVIT. AND THAT'S CERTAINLY NOT THE IMPRESSION THIS COURT GOT FROM READING THE AFFIDAVIT.

MR. ESCOBEDO: WELL, OKAY.

THE COURT: THE AFFIDAVIT PRETTY – IT – IT – I WAS ABLE TO GET A PRETTY GOOD VISUAL OF WHAT HE WAS ATTEMPTING TO DESCRIBE BY READING THE AFFIDAVIT. AND I – AND THIS COURT GOT THE IMPRESSION THAT WAS A ROADWAY THAT TERMINATED IN FRONT OF SOME GATES. AND THEN ON THE OTHER SIDE OF THE GATES, THERE WAS SOME MATERIAL THAT LOOKED LIKE IT MAY HAVE BEEN RAKED.

MR. ESCOBEDO: WHAT THE OFFICER FAILED TO NOTIFY THE COURT, ISSUING MAGISTRATE, WAS THERE WERE EIGHT TO NINE RESIDENTS WHO HAD ACCESS TO THIS ROADWAY AS THEIR FRONT ACCESS.

THE COURT: RIGHT.

MR. ESCOBEDO: WHO USE THAT ROAD AS A [104] MEANS TO GET TO AND FROM THEIR HOUSE WITH AUTOMOBILES. THAT MEANS EIGHT, NINE, TEN CARS, PASSENGER VEHICLES PASS ON THAT ROAD EVERY DAY, PROBABLY TWICE A DAY BECAUSE THEY ARE COMING HOME. THERE IS NO

MENTI... THAT. ALL – ALL THERE IS IN THE AFFIDAVIT IS A ROADWAY. OKAY?

THE COURT: CORRECT.

MR. ESCOBEDO: SECOND OF ALL, THAT THE – THE AFFIDAVIT FAILS TO MENTION THE NATURE OF THE ROADWAY AND – AND HOW THEY ARE ABLE TO FOLLOW THESE TIRE TRACKS. AND I SPECIFICALLY SAY TIRE TRACKS BECAUSE THAT IS MENTIONED IN THE AFFIDAVIT NO LESS THAN ONE, TWO, THREE, FOUR, FIVE TIMES, TIRE TRACKS. THEY WERE ABLE TO FOLLOW TIRE TRACKS THIS 200, 300 FEET. OKAY. DESPITE THE FACT THAT EIGHT TO NINE PEOPLE, THE RESIDENTS USE THAT ROAD EVERY DAY.

THE COURT: WELL, THAT WOULD MAKE THE AFFIDAVIT EVEN MORE PERSUASIVE BECAUSE IN THE AFFIDAVIT, IT SAYS THAT THE – THEY REFERRED TO TIRE TRACKS IN A GENERAL SENSE EARLIER IN THE READING, BUT THEN HE WAS MORE SPECIFIC AND HE SAYS THAT THE TIRE TRACKS APPEARED TO MATCH THE TREAD PATTERN OF THE TIRE CURRENTLY MOUNTED ON THE TRUCK, WHICH –

MR. ESCOBEDO: RIGHT.

THE COURT: – WHICH LEAD UP TO THE GATE AND THAT SOFTER AREA THAT THE COURT SAW IN THE VIDEO. THOSE TIRE – THERE WERE TIRE IMPRESSIONS THROUGHOUT THERE THE COURT COULD SEE QUITE CLEARLY.

[105] YOU WANT TO TURN THAT BACK ON? YOU WANT TO LET THE COURT SEE THAT AGAIN?

MR. ESCOBEDO: SURE. YES.

THE COURT: AND FOR SOME REASON, THE PERSON WHO WAS PREPARING THAT TAPE DIDN'T HIGHLIGHT THAT, BUT THE COURT CERTAINLY SAW IT.

MR. ESCOBEDO: JUST IN ONE SHOT, YOU SEE ONE, TWO, THREE, FOUR, FIVE, SIX VEHICLES, YOUR HONOR –

THE COURT: RIGHT.

MR. ESCOBEDO: – WHO USE THAT ROAD.

THE COURT: RIGHT.

PRESUMABLY, ALL OF THEM MAKING THE TREAD IMPRESSIONS ON THE SOFTER PORTION OF THE DRIVEWAY.

MR. ESCOBEDO: AND HERE – HERE IS THE BEGINNING. AND IT'S MOSTLY ASPHALT.

THE COURT: RIGHT.

MR. ESCOBEDO: AND THEN IT'S BROKEN UP ASPHALT, AND YOU DON'T SEE ANY TIRE TRACKS THERE.

YOU WANT TO REWIND IT THERE?

THE COURT: NO, NO. JUST LET IT PLAY.

MR. ESCOBEDO: OR SEE –

(PAUSE)

MR. ESCOBEDO: SEE, YOU WOULD LOSE THE TRAIL RIGHT THERE. THERE WOULD BE NO TRAIL.

[106] MS. NAJERA: THERE IS THE TRACKS.

MR. ESCOBEDO: LATER ON.

THE COURT: CORRECT.

AND THAT'S WHY IT MAKES IT EVEN MORE PERSUASIVE BECAUSE IN THE COMMON AREA, YOU CAN'T DISTINGUISH IT. BUT AS YOU MOVE CLOSER –

MR. ESCOBEDO: YOU CAN SEE DOZENS –

THE COURT: – CLOSER TO THE DEFENDANT'S PROPERTY, CLEARLY, YOU CAN SEE TIRE TRACKS WHERE – YOU SEE TREAD IMPRESSIONS.

MR. ESCOBEDO: HOW ARE YOU GOING TO DISTIN[G]UISH THIS FROM THE OTHER RESIDENTS?

THE COURT: THOSE GOING DIRECTLY TO THE GATE AND THOSE THAT MATCH THE IMPRESSIONS ON THE TRUCK TIRE.

MR. ESCOBEDO: THAT'S ASPHALT THERE. WHERE IS THE GOUGE? IF THE GOUGE IS MADE ON THE STREET, IT'S GOING TO BE MADE ON THE ROADWAY.

THE COURT: THERE IS TIRE IMPRESSIONS THERE.

MR. ESCOBEDO: GOING TO THIS LOCATION?

THE COURT: RIGHT.

AND THE CAMERA PERSON DOES NOT WANT TO STAY ON THOSE FOR SOME REASON.

MR. ESCOBEDO: WELL, WE'LL REWIND IT AND PAUSE IT.

THE COURT: AND – AND THE COURT NOTICED THERE IS A COUPLE OF OCCASIONS WHERE THE CAMERA PERSON PANS AWAY FROM THESE TIRE TRACKS.

[107] (PAUSE.)

THE COURT: AND, AGAIN, THERE ARE MORE LEADING TOWARDS THE PROPERTY.

MR. ESCOBEDO: YOUR HONOR –

THE COURT: LET'S JUST –

MR. ESCOBEDO: OKAY.

THE COURT: – LET IT PLAY FOR A LITTLE WHILE.

(PAUSE.)

THE COURT: THIS IS THE SUBJECT PROPERTY; IS THAT CORRECT?

MR. ESCOBEDO: RIGHT.

AND I PAUSE RIGHT THERE BECAUSE I FEEL THAT'S ANOTHER MATERIAL OMISSION THAT THE AFFIDAVIT LEFT OFF. HE SHOULD HAVE INFORMED THE MAGISTRATE THAT THIS WAS NOT AN EMPTY LOT WITH NEWLY RAKED DIRT. IT WAS A LOT

FILLED WITH DOZENS AND DOZENS OF WHEELS, TIRES, AUTO PARTS. IT WAS A JUNK YARD.

THE COURT: THAT'S THE IMPRESSION THIS COURT GOT IN READING THIS AFFIDAVIT. IT DIDN'T APPEAR TO BE – IT SEEMED TO BE SOME KIND OF A SALVAGE LOT OR SOMETHING LIKE THAT.

MR. ESCOBEDO: IT'S A MISPRESENTATION.

[108] THE COURT: THAT'S THE IMPRESSION THIS COURT GOT READING THIS AFFIDAVIT.

MR. ESCOBEDO: I'M SORRY? WHAT?

THE COURT: SOME KIND OF A SALVAGE LOT, PERHAPS.

MR. ESCOBEDO: YOU WERE ABLE TO – THE ONLY DESCRIPTION THEY HAVE IN THE AFFIDAVIT, YOUR HONOR, IS FOUR – OR THREE WHEELS, SPOKE – WHITE SPOKE WHEELS THAT THEY OBSERVE AND A TRUCK LINER.

THE COURT: I SUPPOSE WHEN YOU THINK OF PEOPLE HAVING OIL TRACKS AND TRANSMISSION OIL FROM VEHICLES AND TIRE TRACKS GOING OUT AND TIRES STACKED ON ANOTHER SIDE OF A FENCE THAT MATCH – AND A BEDLINER AND THINGS LIKE THAT, YOU KIND OF GET THE IMPRESSION THIS IS NOT THE AVERAGE YARD.

MR. ESCOBEDO: WELL, YOUR HONOR, THERE IS NO EVIDENCE, TESTIMONY GIVEN REGARDING OIL TRACKS OR TRANSMISSION FLUID LEADING FROM THE VEHICLE TO THE PROPERTY,

NONE WHATSOEVER. THE PEOPLE RELIED ONLY UPON TRACKS. AND THEN LATER TODAY, WE FIND OUT HERE ABOUT THIS TIRE GOUGES AND INDENTATIONS.

THE COURT: AND, AGAIN, THE OTHER THING THAT GAVE THIS COURT THE IMPRESSION MAYBE THIS WAS KIND OF – SOME KIND OF A SALVAGE AREA, THERE WAS A FRESHLY RAKED AREA, THERE WERE TIRE TRACKS GOING IN, THERE WERE TIRES STACKED ON THE OTHER SIDE, THERE WAS A LINER ON THE OTHER SIDE, SOMEONE ATTEMPTING TO DISGUISE FRESH TRACKS, SOMETHING SUCH [109] AS ENGINE OIL, TRANSMISSION OIL, RADIATOR COOLER INSIDE THE PROPERTY. WHITE SPOKE TIRES APPEARED TO MATCH THOSE ON THE TRUCK. ORANGE TARP COVERING SOMETHING WHICH MIGHT HAVE BEEN AN ENGINE.

MR. ESCOBEDO: IT WAS TRASH, GARBAGE.

THEY SERVED THE WARRANT THE NEXT DAY, YOUR HONOR.

THE COURT: THE COURT IS INDICATING WHY IN READING THIS IT GOT THE IMPRESSION MAYBE THIS WAS SOME KIND OF A SALVAGE RESIDENCE YARD OR SOMETHING.

MR. ESCOBEDO: IT WASN'T MADE SPECIFICALLY CLEAR THAT THERE WERE NOT ONLY THESE THREE ALLEGED – OR SUSPECT WHEELS AND TIRES BUT DOZEN OF WHEELS.

I MEAN, YOU COULD – YOUR HONOR, YOU COULD GO IN AND PICK OUT ANY TYPE OF VEHICLE AND SAY, OH, THERE IS A STOLEN AUTO PART

FROM THIS VEHICLE BECAUSE IT'S A JUNK YARD, AUTO JUNK YARD.

THE COURT: WELL, WITH ALL THE WHEELS AND THEN THREE SPECIFICALLY THAT MATCH THE ONES ON THE TRUCK, THAT'S PRETTY PERSUASIVE, I THINK.

MR. ESCOBEDO: IF IT WAS TRUE. BUT THAT WASN'T THE CASE, YOUR HONOR.

THE COURT: YOU ARE SAYING IT DOESN'T MATCH. THE WHEELS DON'T MATCH?

MR. ESCOBEDO: THEY DON'T. THERE IS NO EVIDENCE. THEY SEIZE – YOUR HONOR, THEY SEIZE THREE WHEELS. I MEAN FOUR. EXCUSE ME. THEY SEIZE FOUR WHEELS, A SET OF 4 TIRES WHICH DON'T – DON'T BELONG [110] TO THE STOLEN VEHICLE. THEY WERE LOOKING FOR WHITE SPOKE WHEELS. THOSE WEREN'T FOUND. THEY LEAVE – THEY GIVE AN IMPRESSION, OH, WE FOUND THE STOLEN TIRES, BUT THEY DIDN'T.

THE TRUCK LINER, YOUR HONOR, DID NOT BELONG TO THE VICTIM IN THIS CASE.

THEY WERE ON A – JUST A FISHING EXPEDITION. THEY WERE LOOKING FOR – THEY WANTED TO GET IN THAT PROPERTY. THEY FOUND THE STOLEN VEHICLE AND THEY SAID, OKAY, HOW CAN WE CONNECT IT TO CUSKEY. WE'RE GOING TO MAKE UP A STORY ABOUT TIRE TRACKS. TIRE TRACKS. AND THEN HERE WE FIND OUT TODAY SIMPKINS TESTIFYING INDENTATIONS.

"SIMPKINS, DID YOU TELL DETECTIVE WALL ABOUT THE INDENTATIONS? YOU POINT IT OUT TO HIM?"

"YES."

"DID DETECTIVE WALL SEE IT?

DID BE INCLUDE, AN OFFICER OF 14 YEARS, DID HE INCLUDE IT IN HIS AFFIDAVIT?"

"N0."

GOUGES ARE PERMANENT. THEY WOULD STILL BE OUT ON THAT ASPHALT ROAD IF THEY WERE THERE. AND HE WOULD HAVE INCLUDED THAT.

TIRE TRACKS COME AND GO.

THIS OFFICER WOULD HAVE OBSERVED THAT, SAID I GOT CONCRETE, LITERALLY CONCRETE EVIDENCE AGAINST CUSKEY, LEADING –

[111] THE COURT: BUT WHERE?

MR. ESCOBEDO: ON THE ROADWAY.

THE COURT: ONE MOMENT.

YOU CAN'T JUST BE SO IMPRECISE. INDICATE WHERE YOU ARE TALKING ABOUT.

MR. ESCOBEDO: THE ROADWAY, YOUR HONOR. THE STREET, THIRD STREET.

SIMPKINS CLAIMED THAT THE TIRE WAS DEFLATED AND THAT THE RIM, IF YOU CAN BELIEVE THIS, THAT THE RIM CAUSED THE GOUGES.

THE COURT: HE DIDN'T SAY THAT.

MR. ESCOBEDO: HOW CAN RUBBER FROM THE TIRE CAUSE GOUGES OVER ASPHALT?

THE COURT: DEPUTY SIMPKINS DID NOT COME TO THIS COURT AND SAY THAT THE RIM CAUSED GOUGES. HIS TESTIMONY WAS THAT IT SCRATCHED THE SURFACE OUT THERE ON THIRD STREET.

MR. ESCOBEDO: WHAT SCRATCHED THE SURFACE, YOUR HONOR?

THE COURT: THE RIM.

MR. ESCOBEDO: THE RIM.

THE COURT: RIGHT.

MR. ESCOBEDO: THE RIM.

THE TIRE WAS ON A RIM.

THE COURT: WELL, FLAT TIRE, AND THE RIM CAN COME IN CONTACT WITH –

MR. ESCOBEDO: NO, YOUR HONOR. THERE WOULD BE –

[112] THE COURT: -- SURFACES. YOU SEE IT ALL THE TIME.

MR. ESCOBEDO: YOU WOULD HAVE ASPHALT, RUBBER FROM THE WHEEL – I MEAN RUBBER FROM THE TIRE AND THEN THE WHEEL. ADDITIONALLY, THERE WOULD BE – THE RIM WOULD HAVE TO BE EXPOSED ALL THE WAY AROUND IN ORDER TO MAKE A CONTINUOUS GOUGE.

THE COURT: THERE IS NO TESTIMONY THERE IS CONTINUOUS GOUGE.

MR. ESCOBEDO: SIMPKINS TESTIF[I]ED THAT HE FOLLOWED THE GOUGE LINE FROM THE STOLEN VEHICLE BACK TO CUSKEY'S ROADWAY.

THE COURT: WELL, THERE IS NO REQUIREMENT THAT THERE BE AN UNBROKEN, CONTINOUS GOUGE ANYWHERE.

MR. ESCOBEDO: I AGREE.

THE COURT: JUST SUFFICIENT EVIDENCE OF THE VEHICLE'S PATH TO GO FROM ONE POINT TO ANOTHER.

MR. ESCOBEDO: I AGREE.

BUT SIMPKINS TESTIFIED THAT THERE WAS A CONTINUOUS GOUGE LINE.

THE COURT: NO, HE DIDN'T.

MR. ESCOBEDO: HE FOLLOWED IT.

THE COURT: HE – THERE IS NO TESTIMONY IN THIS RECORD THAT HE SAID THERE WAS A CONTINUOUS GOUGE FROM THE PROPERTY TO WHERE THE VEHICLE WAS LOCATED.

MR. ESCOBEDO: YOUR HONOR, THE – THE WHOLE NOTION OF THIS DEFLATED TIRE IS COMPLETELY NEW TO ME, YOUR HONOR. YOU LOOK ON PAGE 6 OF THE AFFIDAVIT, [113] DEPUTY WALL DESCRIBES THE NATURE OF THE THREE – OF THE FOUR WHEELS. HE – NO WHERE –

THE COURT: WHAT LINE WOULD YOU LIKE TO GO TO?

MR. ESCOBEDO: 7 THROUGH 12.

THE COURT: ALL RIGHT.

MR. ESCOBEDO: WHERE DOES HE INDICATE, A VERY MATERIAL FACT, BEING THAT THE LEFT FRONT TIRE IS DEFLATED AND THE RIM SOMEHOW IS CAUSING THESE MARKS? NOWHERE IN THERE.

HE INDICATES THAT THE TIRES – IT APPEARS THAT THEY ARE FULLY INFLATED AND THE VEHICLE WAS ROLLED OUT TO THIS LOCATION, SUPPOSEDLY. AND, AGAIN, I ASK, WOULD AN OFFICER OF 14 YEARS PLUS EXPERIENCE NOT INCLUDE THAT MATERIAL OBSERVATION? THE TIRE WAS NOT DEFLATED.

THE COURT: FIRST OF ALL, YOU HAVE GOT THE DEPUTY RELATING SOMETHING TO THE PERSON WHO IS PREPARING AN AFFIDAVIT. RIGHT?

MR. ESCOBEDO: RIGHT.

THE COURT: AND YOU ARE SAYING THAT THAT'S A MATERIAL OMISSION TO SAY ONE OF THE TIRES – TO FAIL TO SAY ONE OF THE TIRES WAS FLAT?

MR. ESCOBEDO: SURE, BECAUSE THAT PARTICULAR WHEEL WAS THE ONE THAT CAUSED THE TRACK.

THE COURT: OKAY.

AND YOU ARE ALSO SAYING THAT –

[114] MR. ESCOBEDO: I'M SAYING DETECTIVE WALL DID NOT INCLUDE THAT IN HIS AFFIDAVIT.

THE COURT: HOW ABOUT ON PAGE 7, LINE 13, "THE DEPUTIES OBSERVED THREE WHITE SPOKE TYPE WHEELS AND TIRES WHICH APPEARED TO MATCH THE WHEEL AND TIRE MOUNTED ON THE LEFT FRONT OF THE PICKUP TRUCK"? YOU ARE SAYING THIS IS UNTRUE?

MR. ESCOBEDO: NO, I DIDN'T SAY THAT WAS UNTRUE. THEY OBSERVED THREE WHITE SPOKE TYPE WHEELS ALONG WITH HUNDREDS OF WHEELS.

THE COURT: EARLIER IN YOUR COMMENT, YOU INDICATED THAT ISN'T TRUE.

MR. ESCOBEDO: NO, I – NO, NO, I DIDN'T SAY THAT, YOUR HONOR.

I'M SAYING WHAT WAS UNTRUE WAS THE FACT THAT THEY DID NOT INCLUDE THAT THERE WERE HUNDREDS OF OTHER WHEELS LOCATED IN THE BACK. THERE WAS THE THREE THAT THEY ALLEGE CAME OFF THE STOLEN VEHICLE, BUT THERE WAS ALSO MANY, MANY MORE. THOSE WHEELS WERE NEVER RECOVERED WHEN THEY EXECUTED THE SEARCH WARRANT.

THE COURT: WHICH WHEELS WEREN'T RECOVERED?

MR. ESCOBEDO: THE ONES THAT WAS ALLEGEDLY OBSERVED ON THE OTHER SIDE OF THE FENCE ON AUGUST 3RD.

THE COURT: RIGHT.

BUT YOU ARE NOT SAYING THAT THOSE [115] WHEELS WEREN'T THERE?

MR. ESCOBEDO: I DON'T KNOW WHAT HAPPENED OR WHATEVER. THEY WEREN'T SEIZED. BUT THE FACT THAT THERE WAS HUNDREDS MORE THERE I THINK WAS VERY IMPORTANT.

THE COURT: OKAY.

MR. ESCOBEDO: OH, IN THE AFFIDAVIT, WALL INDICATED THAT THE DEPUTIES WERE ABLE TO FOLLOW THE TIRE TREAD MARKS. OKAY? TIRE TREAD MARKS.

THE COURT: YOU WANT TO DRAW THE COURT'S ATTENTION TO A CERTAIN LINE AND PAGE?

MR. ESCOBEDO: YES, I WILL.

ONE MOMENT, PLEASE, YOUR HONOR.

(PAUSE.)

MR. ESCOBEDO: OKAY. HERE WE GO. PAGE 6, LINE – STARTING ON LINE 23, "THEY SAW TIRE TRACKS LEADING BACK TO A FENCE AT THE END OF A LONG DRIVEWAY THAT RAN EASTBOUND FROM THE STREET. THESE TIRE TRACKS APPEARED TO MATCH THE TREAD PATTERN OF THE TIRE CURRENTLY MOUNTED ON THE TRUCK."

THE COURT: ALL RIGHT.

MR. ESCOBEDO: NOW, WE HAVE GOT ONE TIRE, YOUR HONOR, THAT'S SUPPOSEDLY CREATING THIS INDENTATION, GOUGE. THERE IS NO TIRE TRACK THERE. THAT WOULD HAVE BEEN – THAT WOULD HAVE BEEN IN THAT PARAGRAPH.

[116] "WE OBSERVED A GOUGE, INDENTATION THAT LEAD FROM THE GATE ALL THE WAY TO WHERE THE TRUCK WAS ORIGINALLY FOUND."

THE COURT: IT DOESN'T EXACTLY SAY THAT. I THINK YOU ARE READING A LITTLE TOO MUCH IN THAT.

THIS AFFIDAVIT IS SAYING THERE ARE SOME TIRE TREADS IMMEDIATELY BEFORE THE GATE TO SOME DISTANCE AWAY FROM THE GATE. DOESN'T SAY THAT, NECESSARILY.

YOU ARE ASSUMING THEY MUST HAVE BEEN ALL THE WAY TO WHERE THE TRUCK WAS LOCATED.

MR. ESCOBEDO: IF IT WAS DEFLATED, IT WOULD HAVE LEFT A LARGE GOUGED INDENTATION THE ENTIRE WAY UNLESS YOU – ULTIMATELY, SOMEHOW, THE TIRE INFLATED ON THE WAY AND WENT FROM A TREAD PATTERN SUDDENLY DOWN TO INDENTATION, GOUGE. THAT DOESN'T MAKE SENSE.

THE COURT: I'M JUST NOT APPRECIATING THE DIFFICULTY THAT YOU ARE HAVING WITH THAT.

IF – IF – FIRST OF ALL, IT'S UNCLEAR AS TO WHICH TIRE WAS MAKING – THAT THEY ARE REFERRING TO WHEN THEY ARE REFERRING TO THE TRACKS IMMEDIATELY IN FRONT OF THE GATE LEAVING THE PROPERTY, WHETHER THAT'S THE FLATTENED TIRE ON THE FRONT LEFT OR THE OTHERS OR A COMBINATION OF ALL OF THEM.

AND THEN – BUT IT IS CLEAR TO THE COURT WHAT WAS MAKING THE IMPRESSION OR THE SCRATCH ON THE HARD ASPHALT IN THE STREET, ON THIRD STREET, [117] AND THAT WOULD HAVE BEEN THE ONE THAT HAD THE FLAT TIRE WHERE THE RIM AT SOME POINT IN TIME DURING ITS JOURNEY THERE, WHERE IT FINALLY RESTED, WAS SCRATCHING THE PAVEMENT. THAT DOESN'T IMPLY THERE HAS TO BE A CONTINUOUS TRAIL FROM POINT A TO POINT B.

MR. ESCOBEDO: BUT THE FACT THAT THE COURT IS MAKING A DETERMINATION BASED ON THAT TIRE GOUGE MAKING A MARK, WHETHER CONSISTENT OR INCONSISTENT, SHOWS YOU THAT IT'S MATERIAL. BUT IT'S NOT IN THE AFFIDAVIT. THERE IS NO MENTION OF THIS DEFLATED TIRE, THIS GOUGE, INDENTATION, RIM MAKING CONTACT WITH THE ASPHALT.

THE COURT: IT'S LIKE YOU HAVE TO DRAW SOME CONCLUSIONS OR, OTHERWISE, YOU ARE LITERALLY WRITING A BOOK, UNTIL YOU ARE – TO INCLUDE A GREAT DEAL OF INFORMATION.

HOW WOULD YOU SUMMARIZE THAT THEN IF – IF – A PORTION OF THE TRAIL LEADING FROM THE THE [sic] PROPERTY IS TIRE TREAD, THEN WHEN IT

GETS ON A HARDER SURFACE AND THE RIM IS COMING IN CONTACT WITH THE PAVEMENT, IT'S LEAVING A DIFFERENT TYPE OF IMPRESSION? HOW WOULD YOU CHARACTERIZE THAT?

MR. ESCOBEDO: WELL, I WOULD THINK – I WOULD THINK IT WOULD BE IMPORTANT TO NOTIFY THE MAGISTRATE OF THE – OF THE NATURE OF THE SURFACE THAT THIS TRACK IS GOING OVER AND THEN DESCRIBE HOW IT CHANGES BECAUSE –

THE COURT: WELL, DON'T YOU THINK MOST [118] PEOPLE WOULD SAY THEY WERE ABLE TO FOLLOW A TRACK FROM JUST, IN A BROAD SENSE, I WAS ABLE TO FOLLOW A TRAIL FROM WHERE – THAT CONSISTED OF TREAD IMPRESSIONS AT ONE POINT, CHANGED SURFACE AND THEN SCRATCHES ON ANOTHER PORTION AND IMPRESSIONS ON ANOTHER PORTION, DEPENDING ON THE HARD[NESS] OR SOFTNESS OF THE SURFACE FROM POINT A TO POINT B? WOULD YOU SAY WE WERE ABLE TO FOLLOW A TRACK FROM HERE TO THERE?

MR. ESCOBEDO: GIVEN THE PECULIAR CIRCUMSTANCES OF THIS CASE – WHEN I FIRST READ THE AFFIDAVIT, I THOUGHT IT WAS NO PROBLEM. THEN I WENT OUT TO THE LOCATION AND OBSERVED IT. YOU ARE LOOKING AT 300 FEET PLUS OVER DIRT, GRAVEL, BROKEN ASPHALT AND THEN PAVEMENT ON A CITY STREET. AND THEN I'M GOING – AND THEY FOLLOWED TIRE TRACKS, ACCORDING TO THE AFFIDAVIT. THIS IS BEFORE I EVEN LEARNED ABOUT THIS TIRE GOUGE, TIRE

INDENTATION. GOING OFF OF THE AFFIDAVIT, TIRE TRACKS, NO WAY.

THE COURT: WELL, THIS IS CLEAR WHERE IT SAYS THE TIRE TRACKS ARE LEAVING THE AREA IMMEDIATELY IN FRONT OF THAT GATE AWAY FROM THE GATE. I CAN SEE FROM THAT – THAT VIDEO THAT, CERTAINLY, VEHICLES ARE DOING IT.

MR. ESCOBEDO: RIGHT. MULTIPLE VEHICLES PASS ON – THAT MOVEMENT OF THE TRUCK WAS NOT THE ONLY TRANSVERSE OF THAT ROADWAY, YOUR HONOR.

THE COURT: WELL, WE HAVE MORE THAN THAT. [119] WE HAVE THE TIRE TREAD PATTERN LEAVING THE IMMEDIATE AREA OF THE GATE, GOING AWAY FROM IT, WHICH MATCHED THE TIRE TREAD PATTERN ON THE TRUCK.

MR. ESCOBEDO: IT'S – I DON'T – I GUESS THE COURT DID NOT APPRECIATE THE – THE NATURE OF THAT MATERIAL AND THE IMPROBABILITY OF, FIRST OF ALL, CREATING A TRACK THAT COULD BE FOLLOWED THAT LENGTH. AND I THINK MR. CEBALLOS WENT OUT THERE, HE OBSERVED THAT, AND THAT'S WHY MR. OJALA IS PRESENTLY OUT OF CUSTODY.

THE COURT: WELL, I SUPPOSE EIGHT OR NINE MONTHS LATER, YOU – ONE WHO WASN'T THERE AT THE TIME THE TRACK WAS MADE COULD SEE A LOT OF THINGS ABOUT IT. YOU DON'T SEE – MAYBE YOU DON'T SEE HOW IT COULD HAVE DONE IT, BUT THAT DOESN'T MEAN –

MR. ESCOBEDO: THE ROAD, I ASKED THE OFFICER, WAS THE ROAD IN SIMILAR CONDITION AS IT WAS ON THE DATE OF THE ARREST. AND HE SAID, YES. THERE HASN'T BEEN ANY DIGGING –

THE COURT: SO YOUR CONCLUSION IS SOMEONE TOWING OR PUSHING A VEHICLE AWAY FROM THE PROPERTY – OR LET'S TAKE IT AS ONE MIGHT REASONABLY CONCLUDE MIGHT HAPPEN. SOMEONE PUSHING OR TOWING A VEHICLE NOT OPERABLE AWAY FROM THE PREMISES AND IT HAS FOUR TIRES ON IT, ONE OF THEM BEING FLAT AND IMMEDIATELY – THE AREA IMMEDIATELY AS YOUR [sic] ARE LEAVING THE GATE TO THE PREMISES, SUBJECT PREMISES, IS SOFT WHERE CLEARLY ON THE VIDEO YOU WOULD LEAVE [120] TIRE IMPRESSIONS, THEN AS THE SURFACE BEGINS TO CHANGE TO HARDER SURFACES, YOU ARE SAYING THAT THE RIMS AREN'T SCRATCHING THAT AND THEN IT [sic] TURNING LEFT AND GOING DOWN SOUTHBOUND AND IT'S NOT MAKING ANY IMPRESSIONS ON THE ROADWAY?

MR. ESCOBEDO: WELL, YOU CAN MAKE A BIG ASSUMPTION. YOU ARE SAYING THE RIM WAS SCRATCHING IT.

THE COURT: WELL, THAT'S THE – THAT'S THE TESTIMONY BEFORE THIS COURT.

MR. ESCOBEDO: IN THE AFFIDAVIT WRITTEN AUGUST 4TH WHEN THE INFORMATION IS CLEAR IN HIS MIND –

THE COURT: IT'S JUST A SUGGESTION THE AFFIANT MAKES. AND HE SAYS, "DESCRIBE WHAT

YOU SAW." AND THEY SAY, "OKAY, I SAW TIRE TRACKS THAT LEAD FROM HERE TO – FROM POINT A TO POINT B AND, SPECIFICALLY, IN FRONT OF THE GATE ARE TIRE PATTERNS. THAT PORTION OF IT IS A TIRE TREAD PATTERN." HE – AND, CLEARLY, HE'S NOT TALKING ABOUT ALL OF IT AT THAT POINT. HE'S DISTINGUISHING BETWEEN WHAT WAS OBSERVED IMMEDIATELY IN FRONT OF THE GATE TO WHAT WAS MADE LATER ON DURING THE JOURNEY OF THE VEHICLE. HE'S MADE THAT DISTINCTION THERE. DON'T YOU THINK? LOOK AT THE – LOOK AT LINE 25.

MR. ESCOBEDO: WHAT PAGE, YOUR HONOR?

THE COURT: PAGE 5 – PAGE 6, STARTING AT [121] 23. "THE TRACKS, THE TIRE TRACKS LEADING BACK TO THE FENCE." AND THEN 25, "APPEARED TO MATCH THE TREAD PATTERN ON THE TIRES." HE'S TALKING ABOUT THAT ONE SPECIFIC SOFT AREA WHICH IS PRIMARILY – LOOKS LIKE DIRT, IS THE IMPRESSION THE COURT HAS FROM LOOKING AT THE VIDEO.

MR. ESCOBEDO: IF – IF THERE WERE NO RESIDENCES ON EITHER SIDE OF THAT ROADWAY, THIS CASE WOULD BE A LOT CLEARER. BUT WITH THE NUMBER OF VEHICLES TRAVELING ON THAT ROADWAY –

THE COURT: WELL, IT MAKES IT CLEAR TO THE COURT THAT THERE ARE OTHER VEHICLES ON THERE LEAVING TIRE PATTERNS AS WELL OF A DIFFERENT NATURE, A DIFFERENT –

MR. ESCOBEDO: WITH ALL THE VEHICLE TRAFFIC, HOW ARE YOU GOING TO DECIPHER THAT ONE VEHICLE GOING THAT WAYS UP?

THE COURT: BECAUSE ONE IS GOING STRAIGHT FROM THE TRUCK WITH THE TIRE TREAD MATCHING THE TRUCK. THOSE OTHERS DON'T MATCH THE TIRE TREAD ON THE TRUCK. AND YOU WOULDN'T EXPECT THEM TO. AND YOU CAN SEE WHERE THEY HAVE TURNED INTO OTHER DRIVEWAYS AND THEY ARE STILL THERE. THEY ARE THERE AT THE TIME THE VIDEO WAS TAKEN, SOME OTHER PATTERNS.

MR. ESCOBEDO: THEN – WELL, I'LL – YOU KNOW, THE DEAL ABOUT THE GOUGE ON THIRD STREET FROM THE ENTRANCE TO THE ROAD –

THE COURT: WELL, YOU HAVE TO UNDERSTAND [122] THERE IS NO EVIDENCE BEFORE THIS COURT THAT THERE ARE GOUGES ON THIRD STREET.

MR. ESCOBEDO: HOW ABOUT INDENTATIONS THEN?

THE COURT: THERE IS TESTIMONY DESCRIBED AS SCRATCHES BY DEPUTY SPITULSKI AND SOME INDENTATIONS BY DEPUTY SIMPKINS. INDENTATIONS.

MR. ESCOBEDO: INDENTATIONS.

THE COURT: INDENTATIONS WHAT HE SAID IN THE ASPHALT.

MR. ESCOBEDO: NOW, THEORETICALLY, THOSE MADE IN THE ASPHALT, THEY SHOULD STILL BE THERE.

THE COURT: AND THEN HE LATER AS HE WAS QUESTIONED, HE – HE USED THE WORD INDENTATION TO SCRATCH INTERCHANGEABLY.

MR. ESCOBEDO: THEY SHOULD BE THERE, RIGHT?

THE COURT: THE FIRST DEPUTY USED SCRATCHES COMPLETELY THROUGHOUT WHEN HE REFERRED TO WHAT HE SAW ON THIRD STREET ON THE ASPHALT, THE HARD SURFACE.

MR. ESCOBEDO: WELL, HERE IT IS MARCH 20, THE FIRST TIME WE HEAR ABOUT IT.

THEN SIMPKINS, WE ASK HIM, DID YOU TELL WALL? WALL, HE SAID, YES. AND HE ALSO SAID HE POINTED IT OUT TO HIS SUPERVISOR. I FORGOT HIS NAME, ANOTHER DEPUTY. THAT DEPUTY, WE HAVE NEVER HEARD OF HIS NAME, AND HERE IT IS THE FIRST TIME. AND, OF COURSE, THAT'S THE DETECTIVE WHO SUPPOSEDLY SAW THESE [123] GOUGES. WE NEVER HEARD ABOUT THAT. IT WAS NEVER IN THE POLICE REPORT OR NEVER IN THE AFFIDAVIT.

IF SOMEONE WAS GOING TO BE NOTIFIED, IT WOULD HAVE BEEN DETECTIVE WALL BECAUSE IT WAS HIS DUTY TO PREPARE THAT AFFIDAVIT. IT WAS HIS DUTY TO GATHER ALL THE RELEVANT, IMPORTANT EVIDENCE.

THE COURT: AND HE'S GOT TO MAKE A PERSONAL OBSERVATION? ALL THOSE PEOPLE ARE SUPPLYING HIM WITH THE INFORMATION.

MR. ESCOBEDO: HE WAS THERE. HE WAS PERSONALLY ADVISED.

THE COURT: THE COURT IS SATISFIED WITH THE REASON HE GAVE FOR NOT GOING THERE TO PERSONALLY OBSERVE THESE DEPUTIES' OBSERVATION. WHY WOULD HE WANT TO GO DOWN THERE, CREATE MORE ATTENTION TO HIMSELF?

MR. ESCOBEDO: I UNDERSTAND THAT.

HE CLAIMS HE WAS PERSONALLY ADVISED OF THE OBSERVATION. ALL SIMPKINS HAD TO DO, SAY, LOOK, THERE IS THE GOUGE, THERE IS THE INDENTATION. THERE IS THE SCRATCH. IT WAS NEVER DONE.

STRIKE THAT.

SIMPKINS DID TESTIFY THAT HE DID.

THE COURT: HE POINTED IT OUT TO SERGEANT WALL.

MR. ESCOBEDO: CORRECT. RIGHT.

AND SERGEANT WALL TESTIFIED, NO, I DIDN'T SEE ANY, BECAUSE IF HE DID SEE IT, YOUR HONOR, [124] HE WOULD HAVE INCLUDED IT IN THE AFFIDAVIT, NOT ONLY DO I HAVE TIRE TRACKS, MAGISTRATE FALLS, I GOT GOUGES. IF YOU GO OUT THERE, THEY ARE STILL OUT THERE.

THE COURT: THERE GOES THAT WORD, GOUGES.

MR. ESCOBEDO: INDENTATION.

THAT WAS HIS WORD LATER ON WITH DEPUTY D.A. CEBALLOS.

I MEAN WE COULD ALL DRIVE OUT THERE RIGHT NOW AND FIND THOSE SCRATCHES. THEY WOULD BE THERE.

THE COURT: I DON'T KNOW WHY WE WOULD EXPECT THEM TO BE THERE.

MR. ESCOBEDO: IT'S IN ASPHALT. IT'S NOT GOING TO BE WASHED AWAY, BRUSHED AWAY.

THE COURT: SUPERFICIAL SCRATCHES MADE BY TIRE RIMS, YOU SEE IT ALL THE TIME. THEY ARE THERE AND THEN NOT THERE.

MR. ESCOBEDO: I BEG TO DIFFER.

SIMPKINS TESTIFIED THAT THE RIM MADE THE MARK. HE TESTIFIED IT WAS DEFLATED.

"WAS THE RIM OUTSIDE OF THE WHEEL (SIC)?"

"NO."

THE WHEEL WAS NOT MAKING CONTACT WITH THE GROUND. IT WASN'T. I MEAN –

THE COURT: WE DON'T KNOW THAT.

MR. ESCOBEDO: WE CAN USE OUR COMMON SENSE.

[125] THE COURT: WELL, WE CAN SAY THAT IT WAS, BASED ON TESTIMONY, AT SOME POINT IN TIME IT WAS MADE ON THE GROUND.

MR. ESCOBEDO: RIGHT. PHYSICALLY IMPOSSIBLE.

THE COURT: HOW MANY TIMES HAVE YOU SEEN A DEFLATED TIRE? IF YOU TAKE THE VEHICLE OUT OF MOTION IMMEDIATELY, THEN, FINE. BUT IF YOU CONTINUE ROLLING A DEFLATED TIRE, EVENTUALLY, THAT STARTS TO – THE RIM CONTACTS WITH PAVEMENT.

MR. ESCOBEDO: I SEE THAT ON POLICE GETAWAY CHASES, THE CAR IS TRAVELING AT HIGH SPEED, THE WHEEL, WHAT HAPPENS, THE TIRE IS LITERALLY FLUNG OFF THE WHEEL BECAUSE OF THE SPEED OR THE FACT IT IS PUNCTURED. THIS IS BEING PUSHED. IT WASN'T BEING DRIVEN AT A HIGH RATE OF SPEED. IT'S BEING PUSHED. NO WAY COULD THE FORCES OF GRAVITY, WHATEVER CENTRIFUGAL FORCE, CAUSE THAT TIRE TO BREAK UP. AND IF IT DID BREAK UP, THAT WOULD BE OBSERVED.

THE COURT: WHY DO YOU BELIEVE IT HAS TO BREAK UP LIKE ON A HIGH SPEED? YOU CAN SEE A TIRE COMING OFF, THE RIM COMING IN CONTACT JUST BY MOVING IT A LONG DISTANCE.

MR. ESCOBEDO: IT WAS DEFLATED.

THE COURT: IF IT IS FLAT. IF THERE IS SOME AIR HOLDING THE TIRE AGAINST THE SIDE OF THE RIM, IT'S LIKELY TO BE TRUE. BUT IF WE'RE TALKING ABOUT A FLAT TIRE, THAT RIM

COULD CERTAINLY [126] COME IN CONTACT WITH THE PAVEMENT.

MR. ESCOBEDO: I DON'T THINK THERE WAS TESTIMONY IT WAS. NO ONE SAID IT WAS SITTING ON THE GROUND. THEY SAID IT WAS DEFLATED.

THE COURT: WELL, YEAH, ONE DEPUTY DID.

YOU ARE ASKING THE COURT TO FIND THAT THIS – THAT THERE WAS SUCH AN OMISSION – I MEAN IN TERMS OF TIRE TRACKS WAS SO DEFICIENT THAT IT MISLEAD THE MAGISTRATE.

MR. ESCOBEDO: THAT WAS ONE OF THE ISSUES, YOUR HONOR.

THEN I'M TALKING ABOUT 214, 241.

AND THEN I'M TALKING ABOUT THE DESCRIPTION OF THE ROADWAY, THE DESCRIPTION OF THE DRIVEWAY AND THE FACT THIS WAS A – LITERALLY AN AUTOMOTIVE JUNK YARD ON THE OTHER SIDE OF THE FENCE, AND THAT INFORMATION WAS NEVER SUPPLIED TO MAGISTRATE FALLS.

THE COURT: IF ONE WERE TO VIEW THIS AFFIDAVIT NOT AS A – AS AN ADVOCATE BUT JUST A MAGISTRATE, NEUTRAL PARTY, ONE WOULD LEAD TO THE CONCLUSION THAT THERE IS SOMETHING ELSE ON THE OTHER SIDE OF THE GATE OR THAT THIS TRUCK CAME IN THERE, SOMETHING.

MR. ESCOBEDO: YEAH, BUT IF YOU ACTUALLY WENT OUT TO THE LOCATION AND SEE EVERYTHING GOING OUT THERE, THIS IS JUST BARE BONE, SKELETON.

THE COURT: YOU'RE ASKING THIS COURT TO [127] STRIKE SOMETHING FROM HERE AND REREAD IT AND SEE IF I COULD COME TO THE SAME CONCLUSION OR ADD SOMETHING TO IT AND REREAD IT AND WONDER IF THE COURT WOULD COME TO THE SAME CONCLUSION.

MR. ESCOBEDO: IF THE COURT WAS SUPPLIED WITH ADDITIONAL INFORMATION.

THE COURT: WHAT IS THAT ADDITIONAL INFORMATION THAT YOU WOULD LIKE FOR THIS COURT TO READ IN CONJUNCTION WITH WHAT'S HERE?

MR. ESCOBEDO: THE ACTUAL LENGTH OF THE ROADWAY, THE NATURE OF THE MATERIAL SURFACE.

THE COURT: SOME OF IT IS SOFT AND SOME HARD.

MR. ESCOBEDO: AND THAT THE NUMBER OF PEOPLE WHO USE IT AND WHAT WAS OBSERVED ON THE OTHER SIDE OF THE FENCE, HUNDREDS OF WHEELS AND TIRES, AUTO PARTS, AND WHERE ACTUALLY THE VEHICLE WAS LOCATED AT 241, NOT 214.

THE COURT: ALL RIGHT.

MR. ESCOBEDO: AND THE NATURE OF THE WHEELS. THE ACTUAL – ALL WE HAVE IS FOUR WHEELS WERE FOUND ON THE TRUCK, NO DESCRIPTION ABOUT PARTIALLY DEFLATED. WE DON'T HAVE THAT.

THE COURT: OKAY.

MR. ESCOBEDO: AND GIVEN – IF YOU – IF – IF THE MAGISTRATE KNEW OF ALL THESE THINGS, HE WOULD HAVE SAID, "HOW IS THIS TIRE TRACK FOLLOWED? HOW IS IT MADE? AND SHOW ME WHAT – HOW IT IS MARKED UP THE [128] ROADWAY, GRAVEL, DIRT, WHATEVER. AND DO OTHER ROADS – CARS PASS BY THAT ROADWAY?"

"YES."

"HOW MANY?"

"TEN."

"WELL, HOW ARE YOU GOING TO CONCLUDE THAT? HOW DO YOU KNOW THAT THOSE ARE THE WHEELS?"

I MEAN, YOU ARE LOOKING AT HUNDREDS OF WHEELS. I MEAN, YOU COULD GET ANY STOLEN CAR IN L.A. COUNTY, GO TO THAT PROPERTY AND GET A SEARCH WARRANT BECAUSE YOU OBSERVED STOLEN PARTS, POTENTIALLY, STOLEN PARTS FROM THAT PARTICULAR VEHICLE.

THE COURT: OKAY.

MR. POPE.

MR. ESCOBEDO: I'LL DEFER TO MR. POPE HERE.

THE COURT: ALL RIGHT.

MR. POPE: YOUR HONOR, IT'S OUR POSITION WHAT THIS WAS, WAS AN EFFORT ON THE PART OF THAT LITTLE TOWN OF BASSET THERE

APPARENTLY DOESN'T LIKE MR. CUSKEY AND WHAT HAS BEEN CHARACTERIZED AS HIS JUNK YARD.

THE COURT: THE, TOWN DOESN'T LIKE THE DEFENDANT?

MR. POPE: WELL, I THINK –

THE COURT: IS THAT BEFORE THE COURT?

MR. POPE: NO, NO. I'M JUST KIND OF FILLING IN A LITTLE COLOR FOR YOUR HONOR.

[129] WELL, I MEAN THE FACT OF THE MATTER IS ONE OF THE OFFICERS TESTIFIED THAT HE HAS – HE HAS SPOKEN WITH CUSKEY A COUPLE OF TIMES. HE HAS TALKED TO HIM ON THE PHONE, I BELIEVE, FOUR TIMES. IT HAS BEEN GOING ON FOR A COUPLE OF YEARS, THIS CODE ENFORCEMENT TEAM AND WHAT THEY ARE DOING AT THE PROPERTY. AND I THINK THAT THE COURT CAN CONSIDER THAT IN EVALUATING CREDIBILITY.

AND WHAT IT'S GOING TO COME DOWN TO IS THE TIRE TRACKS. DETECTIVE WALL DIDN'T SEE TIRE TRACKS. DETECTIVE WALL DIDN'T SEE GOUGES. DETECTIVE WALL RELIED ON SPITULSKI AND SIMPKINS. SIMPKINS HAS A GRUDGE AGAINST CUSKEY. WITH THAT IN MIND, HE PRESENTED THE AFFIDAVIT AS BEST HE COULD.

NOW, WE LOOK AT THE TESTIMONY OF – IT WAS EITHER SIMPKINS OR SPITULSKI. AND, SURELY, THEY HAVE SPOKEN WITH THE DISTRICT ATTORNEY. SURELY, THEY HAVE SPOKEN WITH DETECTIVE WALL. AND THEY ARE AWARE THAT THIS

WORD, GOUGE, WAS DETECTIVE WALL'S CHOICE OF WORDS WHEN HE WAS SPOKE – WHEN HE WAS SPEAKING WITH THE DEPUTY DISTRICT ATTORNEY. THAT WAS THE TESTIMONY THAT THE COURT HAS.

THE COURT: ARE, WE TALKING ABOUT – NOW, HERE'S THE PROBLEM I HAVE WITH THAT, MR. POPE.

IF WE'RE TALKING ABOUT A TIRE BEING PUSHED AWAY FROM THE PREMISES AND IT'S LEAVING SOME TIRE TREAD IMPRESSIONS IN A SOFT AREA IMMEDIATELY AFTER THE GATE AND THEN AT SOME OTHER PORTION A FLAT [130] TIRE IS NOW LEAVING – A COMBINATION, FLAT TIRE AND POSSIBLY RIM COMING IN CONTACT WITH SOFT AND HARD SURFACES, I WOULD SUSPECT THAT IT'S GOUGING THAT SURFACE ALL ALONG THE WAY. AND IT WASN'T CLEAR TO THE COURT. WE WEREN'T TALKING ABOUT GOUGING OUT ON THIRD STREET, WE'RE TALKING ABOUT GOUGING ON THAT SURFACE ROAD.

MR. POPE: ALL RIGHT, YOUR HONOR. THEN – THEN – THEN, FINE.

MY – THE POINT I'M TRYING TO MAKE IS THIS COURT SHOULD REJECT THE STATEMENTS OFFERED BY SPITULKI AND SIMPKINS.

THE COURT: SPITULKI?

MR. POPE: SPITULSKI AND SIMPKINS, BECAUSE NO. 1, THEY HAVE BEEN MODIFYING THEIR – THEIR STATEMENTS, WHETHER THEY BE IN THE FORM OF SOMETHING GIVEN IN THE REPORT TO THE DETECTIVE, WHETHER THEY BE

SOMETHING IN THE FORM OF TESTIMONY GIVEN TO THIS COURT. THEY HAVE BEEN CHANGING THEIR TESTIMONY TO ACCOMMODATE PROBLEMS IN THE WARRANT THAT HAVE BEEN PRESENTED TO THEM.

THE COURT: LET'S LOOK AT IT LIKE THIS. IF YOU ARE ONE OF THE OBSERVING WITNESSES, WHEN A DEPUTY IS OUT THERE AND YOU SEE SOME TIRE TRACKS, INDENTATIONS, GOUGES AND SCRATCHES ALL ALONG A LONG PERIOD OF THE ROADWAY AND YOU ARE GOING OVER TO RELATE THAT TO SOMEONE WHO IS GOING TO WRITE A REPORT, THAT REPORT WRITER IS PROBABLY GOING TO USE [131] A VERY OVERALL OR BROAD TERM TO DESCRIBE THAT. HE'S PROBABLY NOT GOING TO GO THROUGH THE DETAIL AND SAY, WELL, I SAW THE TIRE IMPRESSIONS HERE. AND, IN FACT, HE DID BREAK IT DOWN TO TIRE IMPRESSION IN THE SOFT AREA AND THEN TIRE TRACKS THE REST OF THE WAY. I MEAN THAT'S – DON'T YOU THINK THAT'S BROAD ENOUGH TO ENCOMPASS THAT DESCRIPTION HE SAW?

MR. POPE: YOUR HONOR, I DO NOT HAVE ANY PROBLEM WHATSOEVER WITH THE WARRANT ON ITS FACE. THE QUESTION IS WHETHER OR NOT THAT INFORMATION THAT WAS PUT IN THE WARRANT IS TRUE. THE ONLY ISSUE IS WHETHER OR NOT SIMPKINS AND SPITULSKI TOLD THE TRUTH TO DETECTIVE WALL. AND I WOULD SUGGEST TO YOU, NO. 1, THEY BOTH HAVE A MOTIVE TO –

THE COURT: I SEE.

MR. POPE: – LIE ABOUT MY CLIENT.

NO. 2, THEY INDICATED TO THE COURT THAT THEY SHOWED DETECTIVE WALL THE MARKS. THEY WERE VERY SPECIFIC ABOUT THAT. AND WHY? BECAUSE NOW WE'RE IN FRONT OF A COURT. WE HAVE TO FILL THESE GAPS IN. WALL TESTIFIED HE DIDN'T SEE THAT. THEY BOTH SAID THEY SHOWED HIM THE – THE – THE LAST OFFICER, THE ONE WHO WENT FROM THE INDENTATION TO THE – OR THE SCRATCH TO THE INDENTATION –

THE COURT: SIMPKINS.

MR. POPE: – SAID THAT HE DID, HE TRACED A WHOLE LINE BACK TO THE – THE – THE – THE STREET WITH NO NAME, THAT HE WENT ALONG THIRD STREET AND HE [132] POINTED THAT OUT TO DETECTIVE WALL. THAT WAS HIS TESTIMONY.

YOUR HONOR, THAT'S NOT CREDIBLE BECAUSE DETECTIVE WALL SAYS THAT DID NOT HAPPEN. NOW, WHAT DOES THAT MEAN? DOES THAT MEAN THAT THAT OFFICER'S CREDIBILITY SHOULD BE QUESTIONED? AND IN THIS DAY AND AGE, THE ANSWER TO THAT IS YES. THESE MEN HAD OTHER MOTIVATION TO GET MY CLIENT. WHY DO YOU THINK THEY TOOK THE DRUG DOG THERE?

THE COURT: WELL, THAT'S NOT BEFORE THE COURT. I DON'T HAVE ANYTHING OF THAT BEFORE THIS COURT, MR. POPE.

Mr. POPE: WHAT'S THAT, YOUR HONOR?

THE COURT: SOME ULTERIOR MOTIVE TO SAYING SOMETHING HAPPENED WHEN, IN FACT, IT DIDN'T.

MR. POPE: YOUR HONOR, ONE OFFICER ADMITTED THERE WAS A FEDERAL LAWSUIT FILED BY MY CLIENT, I BELIEVE, AGAINST SIMPKINS. FIRST, ONE OF THEM ADMITTED TALKING TO HIM FOUR TIMES ABOUT HIS MESSY YARD. THIS IS A MESSY YARD CASE.

THE COURT: AND, THEREFORE, THEY ARE GOING TO –

MR. POPE: AND THEREFORE, THEY ARE GOING TO LIE TO SOMEBODY ELSE THAT THEY ARE WORKING FOR TO GET THAT SEARCH WARRANT. THEY DON'T CARE. THEY ARE NOT THE ONES WHO SIGN UNDER PENALTY OF PERJURY THAT EVERYTHING IN THERE IS TRUE AND CORRECT OR THEY [133] BELIEVE IT TO BE.

AND DETECTIVE WALL BELIEVED THEM. I DON'T HAVE ANY DOUBT ABOUT THAT. BUT HE – HE'S AS MUCH A VICTIM AS IS MY CLIENT. THESE TWO MEN COME UP WITH A STORY ABOUT SEEING TRACKS AND THEN WHEN QUESTIONED, OH, WELL, THEY WEREN'T REALLY TRACKS, THEY WERE GOUGES. AND THEN WHEN THEY COME INTO COURT, THEY DENY THE WORD, GOUGES. THAT WAS THEIR WORD. THEY DENY THAT.

YOUR HONOR, YOU KNOW, THE – THE EVALUATION OF THE TESTIMONY, IT GOES OUTSIDE OF WHAT THE FACTS ARE. AND IT GOES TO MOTIVATION AND INCONSISTENT STATEMENTS. YOUR HONOR, THEY ARE IN FLAT CONTRADICTION. THE DEPUTIES WANT THE MAGISTRATE TO BELIEVE THAT DETECTIVE WALL SHOWED THEM – THAT THEY SHOWED DETECTIVE WALL THIS – THIS ONE

SCRATCH, INDENTATION, GOUGE LINE, WHATEVER YOU WANT TO CALL IT. AND IT'S SIMPLY NOT TRUE. HE DIDN'T SEE ANYTHING. HE DIDN'T EVEN SEE THE ALLEGED TIRE MARKS IN THE SOFT SAND. HE DIDN'T SEE THAT EITHER.

AND SO WHY WAS A DOG BROUGHT IN? BECAUSE THERE IS ULTERIOR MOTIVE. THERE IS NO EVIDENCE OF ANY DRUGS.

THE COURT: WELL, A DOG WAS BROUGHT IN AT A LATER TIME. THE COURT IS UNDER THE IMPRESSION – THE ARGUMENT – THE OPENING IMPRESSION THE COURT WAS GIVEN BY COUNSEL, THE DOG WAS THERE –

MR. POPE: ALL RIGHT.

[134] THE COURT: – BEFORE.

MR. POPE: THE OTHER QUESTION, YOUR HONOR, IS WHY DIDN'T THEY DIG UP THAT AREA THAT APPEARED TO BE RAKED OVER IF THEY BELIEVED IT WAS SOMETHING THERE? AND, NO. 2, WHY DID THEY GO IN PEOPLE'S HOUSES? WHAT ARE THEY LOOKING FOR INSIDE PEOPLE'S HOUSES?

THE COURT: THE SUGGESTION WAS THAT MAYBE THE TIRE TRACKS WERE RIGHT – WENT RIGHT THROUGH THE GATE.

MR. POPE: YOUR HONOR, THAT AFFIDAVIT, IF YOU TAKE IT AT FACE VALUE, IT'S SO SIMPLE. WE HAVE GOT TRACKS. WE GOT EVIDENCE OF BURYING. WE HAVE GOT A PIECE OF PROPERTY THAT MAY HAVE COME FROM THAT TRUCK. THAT'S A

PRETTY SLAM-DUNK WARRANT IF ALL OF THAT IS TRUE. AND THE MAGISTRATE, OF COURSE, HAS NO WAY OF KNOWING THAT IT'S TRUE. HE HAS TO RELY ON THE HONOR AND INTEGRITY OF LAW ENFORCEMENT. AND DETECTIVE WALL, YOU KNOW – HE RELIED ON SIMPKINS AND SPITULSKI.

AND, YOUR HONOR, I BELIEVE THAT THE – THERE IS SUFFICIENT TESTIMONY THAT THE COURT COULD CONCLUDE THAT THAT, WAS, IN FACT, FALSE. AND UNBEKNOWNST TO DETECTIVE WALL, IT'S NOT RELIABLE.

MY – MY OTHER QUESTION IS WHY DID THEY GO INTO A HOUSE LOOKING FOR AN ENGINE, LOOKING FOR WHEELS? THAT DOESN'T REALLY ADD UP. AND I THINK ALL THAT EVIDENCE GOES TO THE INDICIA OF [135] THEIR BAD FAITH IN THE MATTER.

THE COURT: YOU MEAN DURING THE EXECUTION OF THE SEARCH WARRANT?

MR. POPE: YES.

MR. ESCOBEDO: RIGHT.

THE COURT: OKAY.

MR. ESCOBEDO: AND THERE IS NO EVIDENCE WHATSOEVER IN THE AFFIDAVIT THAT THERE IS ANY TYPE OF DRUG ACTIVITY AT ALL. NO MENTION OF NARCOTICS.

THE COURT: WELL, THE SEARCH WARRANT WASN'T LIMITED TO THE OUTSIDE OF THE

PREMISES. IT COMMANDED THE DEPUTIES TO SEARCH THE WHOLE THING.

MR. ESCOBEDO: YEAH, THEY COULD GO INSIDE, OUTSIDE, ABOVE, BELOW, EVERYWHERE LOOKING FOR CAR PARTS. IT'S OVERBROAD.

MR. POPE: JOIN, YOUR HONOR.

MS. NAJERA: IF I MAY YOUR HONOR, BRING EVERYONE'S ATTENTION TO ATTACHMENT NO. 2, PAGE 2.

THE KEY TO A STOLEN CAR AND CAR PARTS CASES ARE THE LITTLE ITTY-BITTY VIN PLATES THAT COULD BE HIDDEN ANYWHERE, AS THIS COURT KNOWS, AND THE FIRST THING THAT THEY HAD ON THAT THING THAT THEY NEED TO FIND WAS THE VIN PLATE. AND THOSE CAN BE HIDDEN ANYWHERE, AS COUNSEL SAYS, UP, ABOVE, DOWN BELOW, ANYWHERE IN THE HOUSE. AND THAT'S THE KEY TO MAKING A CASE ON A CHOP SHOP, FRANKLY, AS WE ALL KNOW.

MR. ESCOBEDO: DID THEY FIND ANY INDICATION [136] OF A CHOP SHOP? NO. ANY STOLEN PROPERTY? NO.

NONE OF THESE CLIENTS – DEFENDANTS HAVE BEEN CHARGED WITH POSSESSION OF STOLEN ITEMS. IT'S BEEN EIGHT, NINE MONTHS SINCE THE INCIDENT, NO CHARGES, BECAUSE NONE OF THESE ITEMS SEIZED EVER TURNED OUT TO BE STOLEN. THEY WERE ALL LAWFULLY OWNED BY MR. CUSKEY.

THE COURT: AND THE TRUCK?

MR. ESCOBEDO: THE TRUCK, THAT – WELL, SOMEONE TOOK IT AND DETECTIVE WALL IS FOLLOWING THAT INVESTIGATION. BUT CUSKEY HAD NOTHING TO DO WITH IT. HE'S NOT CHARGED WITH IT.

MR. POPE: YOUR HONOR, MY CLIENT'S PERSONAL TRUCK WAS REMOVED FROM THE PROPERTY, APPARENTLY, BECAUSE THERE WAS A PIECE OF – A DROP OF GLUE THAT HAD SOMEHOW HIDDEN ONE OF THE NUMBERS. NOW, THE OFFICERS KNEW THAT VEHICLE WAS NOT STOLEN. THEY TOOK IT AND THEY STILL HAVE IT. AND WE WOULD ASK THE COURT ORDER THEM TO RETURN IT.

THE COURT: OKAY.

ANY OBJECTION TO THE RELEASE OF THE TRUCK?

MS. NAJERA: YOUR HONOR, WE WOULD – WE ALWAYS HAD NO OBJECTION TO IT, BUT MR. CUSKEY WAS SUPPOSED TO SEND A REPRESENTIVE WITH THE PAPER SHOWING IT WAS HIS. HE'S SPOKEN WITH THIS OFFICER. THIS OFFICER KEEPS ASKING HIM, GIVE ME SOME PAPERWORK AND IT'S DONE. BUT WE HAVE YET TO SEE IT.

[137] MR. POPE: NO ONE HAS TALKED TO ME.

I ASSUME MY CLIENT CAN HANDLE THAT.

NO ONE HAS MENTIONED THAT TO ME AS HIS COUNSEL, HOWEVER.

MS. NAJERA: WELL, I THINK YOUR CLIENT IS MENTIONING IT TO YOU NOW.

THE COURT: ALL RIGHT.

ANYTHING FURTHER FROM EITHER SIDE?

MR. ESCOBEDO: NO, YOUR HONOR.

I THINK IF YOU REMOVE, CONSIDER THE MATERIAL MISSTATEMENTS, MATERIAL OMISSIONS, YOU LOOK AT THE OVERALL PICTURE AND YOU REMOVE THOSE ITEMS, THIS AFFIDAVIT DOES NOT STAND UP TO THE CONSTITUTIONAL TEST. AND I ASK THAT THE MOTION BE GRANTED.

THE COURT: ALL RIGHT.

I'M GOING TO READ SOME OF THE MATERIAL HERE THE MAGISTRATE HAD BEFORE IT THAT ON AUGUST 3RD. AND I WON'T INCLUDE ALL THE DETAILS.

CERTAIN DEPUTIES ON PATROL DISCOVERED A WHITE PICKUP PARKED ACROSS THE STREET FROM – AND THE MISTAKE HERE IS 214 THIRD STREET. AND THE TESTIMONY IS THAT IT SHOULD HAVE BEEN – HE LOOKED ACROSS THE STREET AND SAW 234 THIRD STREET.

MS. NAJERA: 234, YOUR HONOR.

THE COURT: 234 THIRD STREET AND PUTS 214 THIRD STREET WHEN, IN FACT, IT WAS 241 THIRD STREET.

[138] IT JUST SEEMS TO ME THAT THAT'S THE KIND OF MISTAKE THAT PEOPLE MAKE EVERY DAY. AND THE COURT DOES NOT GET THE IMPRESSION

THAT IT WAS AN ATTEMPT TO PUT AN ADDRESS THAT DOESN'T EXIST, 214 THIRD STREET IN FRONT OF THE DEFENDANT'S RESIDENCE.

DEPUTY SIMPKINS AND SPITULSKI SAW THAT THE VEHICLE WAS MISSING THE FOLLOWING ITEMS: BOTH LICENSE PLATES, VIN NUMBER LOCATED ON THE DASHBOARD, THE ENGINE, THE TRANSMISSION, DRIVE SHAFT, RADIATOR, ENGINE HOOD, DRIVER'S SIDE DOOR, PASSENGER SIDE DOOR. THE DEPUTIES OBSERVED THAT THERE WERE SPACE SAVER TYPE – EMERGENCY TIRES MOUNTED ON THE RIGHT FRONT AND LEFT REAR OF THE PICKUP, THERE WAS A WHITE SPOKE TYPE WHEEL WITH A SONIC BRAND TIRE MOUNTED ON THE LEFT FRONT. THAT'S PRETTY SPECIFIC. THEY ALSO SAW THERE WAS A FIRESTONE BRAND TIRE MOUNTED ON THE RIGHT REAR.

THE DEPUTY SAW A BLACK TRUCK LINER BEHIND THE FENCE NEAR THE ABOVE DESCRIBED TIRES AND RIMS. THAT SHOULD BE ON ANOTHER PAGE, THAT ONE SENTENCE, AS TESTIFIED – TESTIFIED BY SERGEANT WALL.

DEPUTIES NOTICED THAT THERE WAS OIL ON THE FRONT CROSS MEMBER OF THE PICKUP TRUCK, ENGINE RECENTLY WAS REMOVED.

THIS IS ACTIVITY THAT'S HAPPENED – HAPPENING OR JUST HAPPENED.

IN AN ATTEMPT TO LOCATE WHERE THE VEHICLE CAME FROM, THEY SAW TIRE TRACKS LEADING BACK [139] TO A FENCE AT THE END OF A LONG DRIVEWAY.

AND I DON'T KNOW WHY YOU ARE DISTURBED ABOUT THAT WORD, DRIVEWAY, MR. ESCOBEDO.

THEY SAW TIRE TRACKS LEADING BACK TO THE FENCE. HE SAYS THESE TIRE TRACKS APPEARED TO MATCH THE TREAD PATTERN ON THE TIRES CURRENTLY MOUNTED ON THE TRUCK. AND – AND, CLEARLY, THE TIRE TRACKS COULD BE LEFT IN THAT AREA, THAT SOFT AREA THERE IMMEDIATELY AFTER THE GATE.

WHEN THE DEPUTY REACHED THE ABOVE FENCE, THEY SAW THAT THE GATE WAS CLOSED, THE TIRE TRACKS STOPPED AT THE ENTRANCE. THEY SAW AN AREA THAT WAS RAKED, FRESHLY RAKED AND WATERED. AND THE AFFIANT SAYS, AS WOULD BE INDICATIVE OF AN ATTEMPT TO DISGUISE FRESH TIRE TRACKS AND MOTOR – OR MOTOR VEHICLE FLUIDS. AND HE SPECIFIES WHAT.

HE ALSO SAYS THE DEPUTIES OBSERVED THREE WHITE SPOKE TYPE WHEELS AND TIRES WHICH APPEARED TO MATCH THE WHEEL AND THE TIRE MOUNTED ON THE LEFT FRONT OF THE PICKUP TRUCK, ORANGE TARPAULIN COVERING WITH THE SAME DIMENSIONS AS THE ENGINE THAT WAS REMOVED FROM THE PICKUP TRUCK.

CONTACTED THE OWNER. MR. CUSKEY SAID HE WAS THE SOLE OCCUPANT, DIDN'T HAVE ANY KNOWLEDGE OF THE PICKUP AND THAT IT WASN'T ON HIS PROPERTY. DECLINED PERMISSION.

AND THE AFFIANT RESPONDED TO THE LOCATION OF THE PICKUP, NOW IN ATTACHMENT 8,

LINE 12. [140] AND THE DEPUTIES PERSONALLY ADVISED HIM OF THEIR OBSERVATIONS.

AND THE ONLY CONFLICT OR – I DON'T EVEN WANT TO CHARACTERIZE IT AS A CONFLICT. WELL, I GUESS YOU COULD CHARACTERIZE IT AS A CONFLICT. THE DEPUTIES SAID THEY POINTED IT OUT. THE SERGEANT SAYS HE DOESN'T ACTUALLY RECALL THEM POINTING IT OUT BUT DID TELL HIM ABOUT IT INSTEAD.

HE THEN EXAMINED THE VEHICLE AND SAW THAT BOTH NUMBERS HAD BEEN REMOVED. IT WAS IMPOUNDED.

I DON'T SEE WHAT OTHER CONCLUSION A MAGISTRATE WOULD COME TO. IT'S REASONABLE TO BELIEVE THAT THE TRUCK CAME FROM THOSE PREMISES BASED ON WHAT'S IN THIS AFFIDAVIT. AND TO CRITICALLY VIEW AREAS WHERE COUNSEL IS SUGGESTING THAT THE COURT DISBELIEVE, YOU WOULD STILL COME TO THAT CONCLUSION.

AND NO ONE HAS SHAKEN THIS – THERE IS NO CONTRADICTION AT ALL ABOUT THE INFORMATION HERE ABOUT THE TIRE IMPRESSIONS, TIRE TRACKS WITH THE SAME TREAD PATTERN AS MATCHES THESE ON THE TRUCK IN FRONT OF THE GATE. NOTHING.

LET'S SAY THERE WAS NO TESTIMONY AT ALL ABOUT ANYTHING OUT ON THIRD STREET. ALL A MAGISTRATE COULD – LET'S JUST TAKE ALL THAT OUT AND NOT EVEN CONSIDER THAT. THE MAGISTRATE (SIC) THEN SEES A STRIPED TRUCK A COUPLE BLOCKS FROM THE DEFENDANT'S HOME.

THEY SEE – THEY GO TO THE [141] DEFENDANT'S HOME AND THEY SEE THREE TIRES WHICH MATCH ONE OF THE TIRES ON THE TRUCK. THEY SEE A TREAD PATTERN IMMEDIATELY AT THE GATE THAT MATCHES THE TREAD PATTERN THAT'S ON THE TRUCK. WHAT – WHAT'S THE REASONABLE CONCLUSION THAT THE MAGISTRATE WOULD COME TO? HE WOULD COME TO THE CONCLUSION THAT THAT TRUCK CAME OUT OF THAT PROPERTY. SO THE COURT IS GOING TO DENY YOUR MOTION.

ALL RIGHT.

MS. NAJERA: YOUR HONOR, I THINK WE'RE ON A TRIAL DATE. I HAD SPOKEN TO COUNSEL ABOUT THE FACT THAT THEY WOULD LIKE TO SET THIS OVER FOR – FOLKS?

MR. POPE: NO, YOUR HONOR, WE DO HAVE A SEPARATE TRIAL MOTION, TOO, WHICH I WOULD ASK THE COURT TO CONSIDER AT THIS TIME.

THE COURT: THAT'S MR. CUSKEY, WHO IS CHARGED WITH 12021?

MR. ESCOBEDO: YES, HE IS CHARGED WITH A WEAPONS VIOLATION.

THE COURT: AND HE'S NOT CHARGED WITH 11378. MR. OJALA PLEADED TO THAT.

MR. LONGORIA IS PRESENTLY CHARGED WITH 11378 AND MR. CUSKEY WITH 12021. THE ONLY THING THEY HAD IN COMMON IS THAT THE SEARCH WARRANT LED TO THE TWO OF THEM.

MS. NAJERA: THAT'S CORRECT.

THE COURT: MISS NAJERA, YOU WANT TO ARGUE [142] THE – WHY YOU DON'T BELIEVE IT WOULD BE PREJUDICIAL TO TRY THOSE TOGETHER?

MS. NAJERA: ACTUALLY, YOUR HONOR, I WASN'T PREPARED TO – I DIDN'T KNOW THIS MOTION WAS SET. I'M TOTALLY CAUGHT HERE, EMBARRASSED TO SAY, KNOW NOTHING – I CAME HERE SPECIFICALLY FOR A MOTION TO TRAVERSE. I DIDN'T KNOW THE OTHER MOTION EXISTED SO . . .

THE COURT: WE CAN PUT THAT MOTION OVER TO THE TRIAL DATE.

MS. NAJERA: THAT WOULD BE GREAT. I JUST – THERE IS NO SENSE ME TRYING TO WING IT AT THIS POINT.

THE COURT: I UNDERSTAND.

BUT SOMEONE SHOULD BE PREPARED TO ARGUE THAT MOTION.

MS. NAJERA: I BELIEVE MR. WEYANT ALREADY IS. AND HE WAS P[RE]PARED TO DO THIS AND DO THE TRIAL, AS A MATTER OF FACT. MY UNDERSTANDING, HE HAD EVERYTHING EXCEPT FOR THIS MOTION, SO I DIDN'T KNOW.

THE COURT: ALL RIGHT.

IS THERE A POSSIBILITY OF DISPOSITION IN THE CASE?

MR. ESCOBEDO: THERE HAS BEEN AN OFFER, 180 DAYS OF CAL TRANS, YOUR HONOR.

THE COURT: SOUNDS LIKE A GENEROUS OFFER.

[143] MS. NAJERA: THAT'S A NICE OFFER. I DIDN'T MAKE IT, BUT IT SOUNDS LIKE A NICE OFFER.

THAT WAS KIND OF HIM.

WELL, THERE WAS A PENDING NORWALK.

THE COURT: IF YOU DON'T AGREE WITH THE COURT'S RULING, YOU COULD ENTERTAIN THAT DISPOSITION AND ASK FOR A CERTIFICATE OF PROBABLE CAUSE AND PROCEED.

MR. POPE: WE'RE IN A SLIGHTLY DIFFERENT POSITION.

THE COURT: WHAT'S YOUR OFFER?

MS. NAJERA: ONE YEAR COUNTY JAIL, APPARENTLY.

MR. POPE: WITH RESPECT TO COUNT 1, WE HAVE FILED A 995, WHICH THE COURT DENIED. IT – HE – MY CLIENT HAD BEEN CONVICTED OF 11376, I BELIEVE – 78?

SERGEANT WALL: 77.

MR. POPE: 77.

THE COURT: WHEN?

MR. POPE: IN SAN BERNARDINO. IT WAS ABOUT – THE COURT ALREADY DENIED THE MOTION.

THE COURT: I HAVE TWO THINGS HERE FOR YOUR CLIENT, MR. POPE.

MR. POPE: AND THE OTHER ONE, YOUR HONOR, IS A MISDEMEANOR THAT HE WAS CONVICTED OF, A SPOUSAL SITUATION WHICH, APPARENTLY, THE RULE IS YOU CAN'T HAVE WEAPONS FOR TEN YEARS AFTER THAT.

[144] WE NEED TO SEE THE PLEA IN THAT CASE BECAUSE THE MINUTE ORDER –

THE COURT: THIS WAS A MISDEMEANOR?

MR. POPE: YEAH, IT WAS.

THAT ONE, THERE IS NO DOUBT IT WAS A MISDEMEANOR.

THE COURT: ALL RIGHT.

MR. POPE: THE – THE MINUTE ORDER ON THE TERM OF PROBATION DOES NOT HAVE THE DON'T OWN GUNS BOX CHECKED. I NEED TO LOOK AT THE PLEA TO SEE WHETHER THE COURT, WHEN IT ADVISED HIM OF THE TERMS OF PROBATION, TOLD HIM THAT. OTHERWISE, I THINK I MAY HAVE A LEGAL ARGUMENT.

THE COURT: WITHOUT DOING THAT, CAN WE DISPOSE OF THE CASE TODAY?

MR. POPE: NO, I DON'T BELIEVE SO.

THE COURT: ALL RIGHT.

AND WHAT WAS THE OFFER ON MR. CUSKEY?

MS. NAJERA: MR. CUSKEY IS, APPARENTLY, A YEAR, YOUR HONOR.

THE COURT: OKAY.

MS. NAJERA: YOUR HONOR, I'M CURIOUS. DOES THE COURT KNOW ANYTHING ABOUT MR. LONGORIA'S FELONY OUT OF NORWALK?

MR. ESCOBEDO: THAT WAS DISMISSED. HE WAS PICKED UP AND IT WASN'T EVEN FILED.

MS. NAJERA: WASN'T FILED?

[145] IT WAS FILED, VA055884. I'LL JUST RUN IT. NEVER MIND.

THE COURT: 10851 IN '78, THREE MONTHS SUMMARY.

PARDON ME.

36 MONTHS SUMMARY. GOT A 594, GOT A 415, GOT A 166.

THEY WERE TOGETHER WHEN THESE 166'S – ON THESE 166 CASES, MR. LONGORIA AND CUSKEY?

MR. POPE: THEY ARE INDICATING NO.

MR. ESCOBEDO: NO. COINCIDENCE.

THE COURT: SAME COURT.

MR. ESCOBEDO: YEAH.

DEFENDANT LONGORIA: YEAH, LIVE IN THE SAME SQUARE THERE.

THE COURT: AS A MATTER OF FACT, MR. LONGORIA HAS TWO OF THEM.

THE DEFENDANT: TWO OF WHAT?

THE COURT: ALL RIGHT.

SO ON OCTOBER 28, '99, THE GRAND THEFT THAT MR. LONGORIA WENT TO PRELIMINARY HEARING IN WHITTIER, YOU ARE SAYING WAS DISMISSED?

MR. ESCOBEDO: YES, YOUR HONOR.

MS. NAJERA: OKAY.

THE COURT: WHILE THE COURT BELIEVES THAT IT'S A LITTLE ON THE GENEROUS SIDE, THE COURT WILL GO ALONG WITH 180 CAL TRANS, IF HE WERE TO ACCEPT IT.

[146] (DEFENDANT AND HIS COUNSEL CONFER SOTTO VOCE.)

MR. ESCOBEDO: YOUR HONOR, THE COURT – I'D LIKE – I NEED TO TALK TO MY CLIENT. COULD THE COURT KEEP THAT OPEN FOR THE NEXT COURT DATE?

THE COURT: ALL RIGHT. ALL RIGHT.

ALL RIGHT. TRIAL DATE AND MOTION TO SEVER. WHAT DATE DO YOU WANT? WE'RE ON MARCH 16.

MR. ESCOBEDO: WE'RE ON THE 20TH, YOUR HONOR.

THE COURT: OH, SO WE'RE TRAILING.

MR. ESCOBEDO: ZERO OF 10.

MS. NAJERA: YEAH.

THE COURT: I HAVE TRIAL DATE, MARCH 16 PLUS.

THE CLERK: TODAY IS FOUR OF 10, YOUR HONOR.

MS. NAJERA: I THINK WE'RE FOUR OF TEN TODAY.

COUNSEL HAS NO OBJECTION TO CONTINUING IT?

MR. WEYANT IS ON VACATION AND WON'T BE BACK FOR ANOTHER TWO WEEKS. I CAN REASSIGN THIS, IF YOU WANT TO DO IT, OR IF COUNSEL WOULD LIKE TO TALK TO THEIR CLIENT, I WOULDN'T BE OPPOSED TO CONTINUE IT, IF THEY WAIVE TIME.

[147] THE COURT: WHAT TIME DO YOU WANT?

MS. NAJERA: ANY TIME SECOND WEEK OF APRIL IS FINE.

MR. ESCOBEDO. APRIL 3RD. ZERO OF 10 ON THE 3RD.

MS. NAJERA: THAT'S FINE.

THE COURT: ALL RIGHT. APRIL 3RD TRIAL DATE.

AND –

MR. ESCOBEDO: JUST LIKE TO LET THE COURT KNOW APRIL 14TH, I'M UNAVAILABLE.

THE COURT: ALL RIGHT. YOU WANT TO TAKE THE TIME WAIVERS, SOMEONE?

MS. NAJERA: YES, IF I MAY, YOUR HONOR.

MR. CUSKEY AND MR. LONGORIA. DEFENDANT LONGORIA.

MR. CUSKEY, MR. LONGORIA, EACH OF YOU HAS THE RIGHT TO HAVE YOUR TRIAL HEARD WITHIN TEN DAYS OF MARCH 16. MY UNDERSTANDING IS THAT YOU ARE BOTH GOING TO AGREE TO WAIVE TIME AND PUT THIS OVER TO APRIL 3RD WITH THE UNDERSTANDING WE WILL TRY YOU ON APRIL 3RD OR WITHIN TEN DAYS OF APRIL 3RD.

IS THAT OKAY WITH YOU, MR. CUSKEY?

DEFENDANT CUSKEY: YES.

MS. NAJERA: AND YOU AGREE AND WAIVE TIME TO THAT DATE?

DEFENDANT CUSKEY: YES.

[148] MS. NAJERA: AND DO YOU, MR. LONGORIA, DO YOU AGREE TO THE DATE OF MARCH 3RD – I'M SORRY – APRIL 3RD OR WITHIN TEN DAYS OF THAT DATE?

DEFENDANT LONGORIA: YES.

MS. NAJERA: COUNSEL JOIN?

MR. ESCOBEDO: YES.

MS. NAJERA: MR. POPE, JOIN?

MR. POPE: YES.

MS. NAJERA: PEOPLE JOIN.

THE COURT: TR[IA]L DATE APRIL 3RD, PLUS 10. TIME IS WAIVED.

MR. CUSKY AND MR. LONGORIA, YOU ARE ORDERED TO RETURN TO THIS COURT AT NINE O'CLOCK WITHOUT FURTHER NOTICE OR ORDER.

AND MR. OJALA –

MR. POPE: THANK YOU, YOUR HONOR.

THE COURT: – WHAT ARE WE DOING ON THE OJALA MATTER, MISS NAJERA?

MS. NAJERA: MR. OJALA SHOULD BE REMANDED, YOUR HONOR.

THE COURT: WHAT WAS HIS SENTENCE?

MS. NAJERA: IT WAS ONE YEAR IN COUNTY JAIL.

THE DEFENDANT: I DID SEVEN MONTHS ON IT.

MS. NAJERA: OKAY.

I THINK HE HAS TO BE – I'LL ASK THE BAILIFF.

WOULD HE HAVE TO BE PROCESSED?

[149] HE HAS TO BE RELEASED TECHNICALLY THROUGH THE JAIL.

THE DEFENDANT: I HAVE BEEN RELEASED THROUGH THE JAIL.

THE COURT: YOU WERE RELEASED BY THIS COURT, MR. OJALA, IS THAT CORRECT?

THE DEFENDANT: YES, SIR.

THE COURT: YOU WEREN'T RELEASED BY THE SHERIFF?

MS. NAJERA: IT MIGHT BE –

THE COURT: YOU HAVE DONE SEVEN ACTUAL MONTHS?

MR. ESCOBEDO: HE HAS BEEN IN CUSTODY SINCE AUGUST 3RD.

THE DEFENDANT: OVER SEVEN MONTHS.

MS. NAJERA: IT'S VERY POSSIBLE THEY SIMPLY HAVE TO PROCESS HIM. I THINK IF WE DO NOT SEND HIM BACK, THEY ARE GOING TO SHOW HIM AS LOST IF THEY DON'T PROCESS HIM OUT.

THE COURT: NOW, IF WE GIVE HIM TIME SERVED AND ORDER HIM TO THE PROBATION DEPARTMENT –

MS. NAJERA: THAT'S FINE. WHATEVER THE COURT THINKS IS APPROPRIATE.

THE COURT: ALL RIGHT.

ALL RIGHT. MR. LONGORIA –

MR. ESCOBEDO: OJALA.

THE COURT: OJALA. PARDON ME, SIR.

ALL RIGHT. TIME SERVED.

[150] MINUTE ORDER WILL REFLECT DEFENDANT HAS GOT TIME SERVED. AND THAT'S – YOU KNOW HOW MANY MONTHS THAT WAS?

DEFENDANT OJALA: A LITTLE OVER SEVEN MONTHS.

THE COURT: WHAT WAS HIS ARREST DATE?

DEFENDANT OJALA: AUGUST 3RD – AUGUST 4TH.

(THERE WAS A DISCUSSION HELD OFF THE RECORD, NOT REPORTED.)

THE COURT: ALL RIGHT. 227 DAYS ACTUAL, PLUS 113. 340. ALL RIGHT.

MS. NAJERA: THAT'S FINE, YOUR HONOR.

THE COURT: FOR THE MINUTE ORDER, IT WILL BE COUNTY JAIL, 227 DAYS, PLUS 113, FOR A TOTAL OF 340 DAYS TIME SERVED.

REPORT TO YOUR PROBATION OFFICER NO LATER THAN THE 22ND, WEDNESDAY, BEFORE THEY CLOSE.

PROBATION WILL CONTINUE ON THE SAME TERMS AND CONDITIONS.

DEFENDANT OJALA: OKAY. YOU GOT A CARD WHERE I GO TO?

THE COURT: YES.

WILL YOU GIVE HIM ONE OF THOSE CARDS.

ALL RIGHT.

SO YOU ARE DONE.

[151] MR. ESCOBEDO: OKAY. THANK YOU, SIR.

THE COURT: ALL RIGHT.

(PROCEEDINGS CONCLUDED.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. EA "E" HON. DAVID S. MILTON, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA PLAINTIFF, VS. MICHAEL CHARLES CUSKEY, RANDY LONGORIA, DEFENDANTS.	)	NO. KA045491 REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES)

I, SHARON BAKER FOX, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES 1 THROUGH 151 COMPRISE A FULL, TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER ON MARCH 20, 2000.

DATED THIS 17TH DAY OF SEPTEMBER, 2000.

/s/ Sharon Fox CSR # 4332
OFFICIAL REPORTER

EXHIBIT "E"

ORIGINAL

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD CEBALLOS,	)	**No. CV 00-11106**
Plaintiff,	)	**(AHM) (AJWx)**
	)	
vs.	)	
GIL GARCETTI, Individually, and in his Official Capacity, FRANK SUNSTEDT, Individually, and in his Official Capacity, CAROL NAJERA, Individually, and in her Official Capacity, COUNTY OF LOS ANGELES, A Municipal Corporation, and DOES 1 through 10, Inclusive	)	
Defendants.	)	

DEPOSITION OF GILBERT GARCETTI

Tuesday, October 16, 2001

* * *

[25] that needed my attention; but as the C.E.O., I set the policy. I set the priorities with the assistance of others and formulating that, but that was my role, my responsibility.

Q. Okay. I don't think I asked this question like this, but I'll try it here. Even though you're actively involved in your reelection campaign in 2000, would you have been the person in the district attorney's office that ultimately

would have decided which deputies were going to be promoted in 2000 from grade 3 to grade 4?

A. Yes.

Q. Okay. And tell me what that involves in terms of you doing that in 2000, not generally, but let's talk about it in 2000.

A. Again, the process was in place, and I helped create the process, and the process – once we made a decision that there were going to be promotions and we had a rough number of promotions to be made, we expected our – what we call directors like a George Kinoke to make contact with all the head deputies who are the deputy in charge of people who supervised the people who were on – in this essence what we referred to as a grade 4 list. They were grade 3 deputies wanting to become [26] grade 4 deputies. We'd get their input. "All right. Tell me about deputy 'A.' Who are your top candidates? Why should we promote them?"

All the directors would do that. They would then come to a meeting with the three assistant district attorneys and the chief deputy. The chief deputy would chair that meeting. There'd be a general discussion then about "All right. If we have ten positions, you know, who deserves it?" And a general discussion – the chief deputy ultimately makes the final decision as to "Okay. These are the top ten. This is the list that I'm going to give to the D.A."

He – or if it were Sandy Dechita, the chief deputy before Bob Heflin – would bring it to me. I would review it. I could delete. I could add. I would ask questions. "Why is this person on here? Why isn't someone else on there?" And ultimately, I would sign off.

Q. Okay. So in order to get into the – well, let me see. Would you know – be able to give me a range of numbers as to how many people would have been eligible in August of 2000 to move from – well, to be promoted from grade 3 to grade 4, and approximately how many would have actually obtained

* * *

[30] essence, carry the flag for those he believes deserve a promotion. If he knows that everyone of his supervisors has, say, five people, he knows not everyone can get a promotion. So who are the one or two or three or four or five, six who deserve the promotion?

Q. From each particular office?

A. Right.

Q. Okay. Now, to your knowledge, are there notes or records that are kept, say, between the director and the district attorney in charge of an individual office as to how that list of eligibles is, say, prioritized or anything at all like that?

A. I'm not aware of any, anything written.

Q. All right. So although one could be eligible to be promoted, it sounds like, to me, they would still need their deputy in charge to prioritize them in order to have a shot at being promoted to a grade 4.

A. Yes and no. I mean, that's the most important thing, but that person may have just come to Pasadena, for example, has only been there for three months; so maybe there's another supervisor who has greater input or a different director who supervised that person.

[31] So when they come together now, all the directors, assistant D.A.'s come together, that's when information is shared again. "Well, this person worked for me. He may be working for you now, but he was fabulous when he worked for us."

Q. Okay. Now, it sounds like, to me, that, by the time you get involved in the process of actually personally ratifying who in 2000 is going to become a grade 4 from a grade 3, you actually have a – pretty much a reduced list. You've got a list –

A. I have a list of 40 recommendations. It's not 42, and I can knock off 1 or 2.

Q. Okay.

A. This is it.

Q. Okay. But it sounds like, to me, that you actually go through each of the people, and do you review something, or is this a conversation where you expect other people to have reviewed it and be able to answer questions or –

A. It's a conversation I have with the chief deputy. And I will go down, and many of the people I know. I've worked with them. Some of the people I don't know, or maybe someone isn't on the list because I will then look at the master list and go down the master list too. "Well, why isn't this [32] person on this list?"

Q. Okay. So do you have a recollection whether in 2000 you did that, you looked at the master list and saw some folks that you thought maybe belonged on that list?

A. Well, there you asked two questions.

Q. I'm sorry.

A. One, yes, I did look at the list, I'm sure. Two, do I recall saying that there's some people who belong on that list? No. I don't recall.

Q. Okay. Now, would it be a fair statement – well, let my back up for a second first.

Are you aware of where the particular assignment is when that honed down list gets to you? Are you aware of where those grade 3 deputies are at the time you're looking at the list? Does that make sense?

A. Yeah, it makes sense. I may not be aware, but I'll ask the chief deputy.

Q. Okay. Now, just from being around for 29 years, I understand that you and Mr. Sunstedt have a good relationship.

A. Yes.

Q. Okay. And you've worked together – well, let me ask you. Let's include your time in the –

* * *

[34] promotability – that they would carry significant weight with you?

MS. LEE: At what time?

MR. BECERRA: In 2000. Thank you.

THE WITNESS: Yes. But understanding that every head deputy carries a flag for their people – and my job is not just to compare who the best people are in a particular branch office like in Pomona but to take a look at the office as a whole, and it could be that they have 99

percent stars in Pomona, or they could have 99 percent dogs in Pomona.

BY MR. BECERRA:

Q. Okay. Do you remember in – whether or not in 2000 any Pomona grade 3's stood out in your mind for whatever reason?

A. In 2000?

Q. The list is announced in August of 2000.

A. Yeah. There are probably two that I can think of. Kathy Cady and Manny Garcia. I don't remember who else was on the list out of Pomona. It might have been promoted –

MS. LEE: Do you want the list?

MR. BECERRA: Yeah. Thanks.

[35] BY MR. BECERRA:

Q. Just take a look at it. Thank you. This was exhibit B in a different deposition.

(Plaintiff's Exhibit B was marked for identification by the court reporter and is attached hereto.)

BY MR. BECERRA:

Q. Anyone else kind of stand out in your mind?

MS. LEE: From just Pomona or just overall?

MR. BECERRA: No. Just Pomona.

MS. LEE: And I think –

THE WITNESS: Well, I don't know who else was from Pomona.

MS. LEE: For the record, Mr. Sunstedt did testify. I think he drew little circles. There's four Pomona people that he –

MR. BECERRA: That actually got promoted. Yeah. Little dots.

THE WITNESS: Manny Garcia. No. No one else.

BY MR. BECERRA:

Q. So what stood out in terms of Kathy's – I'm sorry. Ms. Cady's performance as a district attorney?

A. I just – both Kathy and Manny Garcia – [36] they both had worked in the family violence division downtown, and I was personally pretty close to some of the people there and heard about their trials; and so I knew a little more about what they had done, and I know Kathleen had handled some very difficult cases –

Q. Okay.

A. – in family violence.

Q. Okay. And I'm sorry to – and was that also true with Manny Garcia?

A. Manual Garcia, yes.

Q. And Fernando Guzman didn't stand out in any way?

A. No. I knew Fernando from downtown. Good lawyer, but I didn't know anything more.

Q. How about Donald Clem?

A. I didn't – I'd never worked with Donald Clem.

Q. All right. Did you have any recollection of having any personal contact with deputy district attorney Richard Ceballos, the plaintiff in this case?

A. Any personal contact?

Q. Yeah, before these –

A. Other than saying, "Hello"? Yeah. I don't [37] recall. We certainly didn't work together, and I don't recall talking to him about any particular case.

Q. Okay. Do you ever recall speaking – well, let's back up.

In 2000 Mr. Sunstedt has now been in Pomona, I guess, approximately three years or so, having left his position in the top of your administration.

Did you have any regular contact with him at all?

A. No.

Q. Any contact you would have had would have been what? At meetings, say, of – with heads of offices?

A. No. On occasion I would just call and see how he's doing, but that was infrequent.

Q. Would you have been made aware of a deputy district attorney's allegations of police perjury in 2000 which is – I'm not talking about Rampart's now. I'm talking about post Rampart. Would that kind of information had made its way to you if you had a line deputy that was making allegations of police misconduct with regards to the securing of a search warrant?

* * *

EXHIBIT "F"

ORIGINAL

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD CEBALLOS,	)	
Plaintiff,	)	
vs.	)	**No. CV 00-11106 (AHM) (AJWx)**
GIL GARCETTI, individually, and in his Official Capacity, FRANK SUNSTEDT, Individually, and in his Official Capacity, CAROL NAJERA, Individually and in her Official Capacity, COUNTY OF LOS ANGELES, A Municipal Corporation, and DOES 1 THROUGH 10, Inclusive,	)	
Defendants.	)	

DEPOSITION OF CAROL NAJERA

Thursday, September 20, 2001

* * *

[150] court and then a Grade 3. You could call them co-calendar deputies, two-calendar deputies, anything you want to call them, but the bottom line is a Grade 4 was a Grade 4 and the Grade 3 was a Grade 3.

Q. But wasn't Kathy Cady a Grade 3?

A. Yes.

Q. And then in July of 2000, she is now calendar deputy or a co-calendar deputy or a back-up calendar deputy or whatever you want to call her?

A. Whatever you want to call her. Right.

Q. And Mr. Ceballos no longer is?

A. That's correct. That's in July, not in March. You were asking me about in March right after the Cuskey thing did he lose his calendar position, and I told you nothing happened, first of all, until April until we collapsed. Then after we collapsed in April, Frank had told Mike Grosbard, Debra Passow, Don Clem and Mr. Ceballos in my presence and he pretty much informed every Grade 3, open and notoriously in Pomona, that Kathy, who had come to us, was only going to be filing for – I believe he said six months, but I think she ended up filing longer, and then she was going to get transferred into calendaring and they were going to be transferred into filing.

* * *

[152] I'm not sure if there was an open calendar position more than the fact that both Mr. Clem and Mr. Ceballos were told they would be the next ones up to fill, and Mr. Clem got transferred; so that only left Mr. Ceballos.

Q. Did you know when Mr. Ceballos was told that?

A. This was told in the presence of all four calendar deputies around the time that Kathy Cady got there.

Q. Roughly when would that have been, as best as you can recall?

A. We can find that out, but it was when Kathy Cady first arrived.

Q. Would that be in '99 or 2000?

A. Like I said, it's something I can find out really easy for you, but I don't remember right now.

Q. If we were to use the Cuskey case as a benchmark, could we say whether it was before or after Cuskey?

A. Before Cuskey.

Q. Months before?

A. A few months, yes. I don't know how many months before, but it was before Cuskey in terms of months.

[153] Q. And you know from the grievance and you know from the lawsuit that there is an allegation that there is a murder case that you specifically took away from Mr. Ceballos as a result of the actions that he took and you assigned to a less experienced Grade 2?

Are you familiar with that accusation?

A. Yes.

Q. That's not true? You didn't do that in retaliation for that?

A. That is not true.

Q. You didn't do it in retaliation?

A. I not only didn't do it in retaliation, but I think – I may have physically taken the file from Mr. Ceballos, I didn't make the ultimate decision.

Q. Who made that decision?

A. Mr. Sundstedt.

Q. Did you talk to him about that decision before it was made?

A. Only in that Frank wanted me to go to all of the calendar deputies, and probably only because he didn't have time, and find out what murders they had. He was trying to figure out – basically, I think it was twofold. He wanted to know what all the murders were because I wasn't really good at keeping track of [154] that as I should have, and he also was trying to find a murder case for Mike Dauber and Steve Gallon to do.

Q. When was that, if we can use Cuskey as –

A. I don't remember.

Q. Was it before or after Cuskey?

A. I don't remember.

Q. Do you remember going to each of the calendar deputies trying to find out what their – I don't want to say backlog – but what their case load was on 187 murders?

A. I specifically went to every calendar deputy and asked them what their case was and a little blurb about what their case was, and I gathered all that information.

Q. Do you know how many murder cases were pending at the time that you did this?

A. I think everyone had like between two and three, but I don't think Michael Grosbard had any. If he did, it was something real complicated.

Q. The total number of murders would be how many?

A. I don't remember right now.

Q. We can just do the math.

A. That's what I was going to say. Do the math. I'd say –

* * *

[157] I went in there and he said "How dare you?" and throw a punch or anything.

Q. Other than taking this particular 187 away from any of the deputies and assigning it in this case to – it's Mr. Gallon that got it?

A. Correct.

Q. Did you take any of the other 187s away from any of the other deputies and assign those to Mr. Gallon or anyone else?

A. I didn't take this one; so I didn't take any of them from anybody.

Q. All right. Were you involved in any way – let's do it this way: Do you know if any other 187s were taken away for the same reason from any of the other deputies and reassigned to the two people you mentioned earlier?

A. I believe that Ms. Moe also had a case that was reassigned to one of these deputies.

Q. Do you remember the name of that case?

A. No.

Q. Do you actually remember that or do you think that that may have happened?

A. I think that's what happened.

Q. Would you have been the one that mechanically picked up the file and made the [158] transfer?

A. She might have taken it to him, too. I really don't know.

Q. But did you do the actual mechanics of it? Did you actually do that with Mr. Ceballos?

A. I don't know if I mechanically did it or if he did it or if he gave it to Steve or if I took it and gave it to him. I don't recall.

Q. Are you concerned at all as to whether or not Mr. Ceballos, who is – let's go over one other incident.

Mr. Ceballos is going to wind up doing filings out in Rio Hondo; correct?

A. Correct.

Q. How did that come about?

A. We had – Well, Frank had to staff a full-time filing deputy in Pomona, and we had a part timer at the time. He needed a full-time person – in Rio Hondo we had a part timer at the time. So we needed a filing deputy.

Q. And you were aware that Mr. Ceballos lived pretty close to the courthouse in Pomona?

A. Yes.

Q. Rio Hondo, I guess, what we call El Monte Court?

[159] A. Yes.

Q. It's located in El Monte?

A. Correct.

Q. Is that particular position – a filing deputy – is that like an – in your opinion, do you consider that a sought-after position for an experienced trial attorney in the district attorney's office?

A. Sought after, no.

Q. Why is that? Why do you think that?

A. I think trial deputies like to do trials. I don't think they like to file or I don't think it's the first choice.

Q. First choice would be to do trials, if you are a trial deputy?

A. Correct.

Q. Before Mr. Ceballos is transferred to Rio Hondo, do you talk to him about the fact that there is going to be a transfer away from his position as a trial deputy in Pomona?

A. Yes.

Q. The decision to transfer him, who makes that decision?

A. Mr. Sundstedt.

Q. Does he discuss it with you before he does [160] it?

A. He discussed the fact he needed a filing deputy and that he had already told Richard and Don that they were the next two up and Don was gone.

We went through all the Grade 3s. The Grade 3s that we had were going to be Grade 3 positions obviously. Of all the Grade 3s that we had, if you eliminate the ones that do domestic violence and sexual assault and then you limit the ones that are doing the EDP, the early disposition program and you eliminate the ones that are already filing and you eliminate the ones that are doing domestic violence, that only left us with, like, I think, four. Of those four, I believe that two were pregnant and were going to go on maternity leave. One had just gotten there, just been transferred out there to Pomona because of family problems, and the last one left was Mr. Ceballos.

Q. What was the reason that you needed a full-time filing deputy in Rio Hondo?

A. We had historically always had two full-time filing deputies in Rio Hondo. The work, the work load.

Q. It would be the work load, and that's historically how it had been staffed?

* * *